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Homeland Security initiatives in light of  
decreased support by the federal government

Emler, Jay Scott.

Monterey, California. Naval Postgraduate School

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# **NAVAL POSTGRADUATE SCHOOL**

**MONTEREY, CALIFORNIA**

## **THESIS**

**HOW TO FUND HOMELAND SECURITY WITHOUT  
FEDERAL DOLLARS: STATE AND LOCAL FUNDING OF  
HOMELAND SECURITY INITIATIVES IN LIGHT OF  
DECREASED SUPPORT BY THE FEDERAL  
GOVERNMENT**

by

Jay Scott Emler

September 2008

Thesis Advisor:  
Second Reader:

Christopher Bellavita  
Alan D. Conroy

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**HOW TO FUND HOMELAND SECURITY WITHOUT FEDERAL DOLLARS:  
STATE AND LOCAL FUNDING OF HOMELAND SECURITY INITIATIVES IN  
LIGHT OF DECREASED SUPPORT BY THE FEDERAL GOVERNMENT**

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Submitted in partial fulfillment of the  
requirements for the degree of

**MASTER OF ARTS IN SECURITY STUDIES  
(HOMELAND SECURITY AND DEFENSE)**

from the

**NAVAL POSTGRADUATE SCHOOL  
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## **ABSTRACT**

States cannot depend upon the federal government to fund homeland security initiatives at the state and local level. This thesis, therefore, examined alternatives states and local units of government might use to fund homeland security initiatives, ranging from conventional alternatives such as, asset forfeiture, sales taxes, congestion fees and multi-year budgeting with the addition of a “rainy day” fund, to less conventional options like public/private partnerships and innovative investment strategies, mirroring the Kansas Economic Growth Act for biosciences. The policy options analysis revealed that while most of these options have some merit or suitability for some jurisdictions, none appears to be conclusively appropriate.

The final recommendation of this thesis is, therefore, that homeland security professionals and emergency management directors take the initiative and determine in their jurisdiction which programs are the most critical. They then should approach the state executive budget office and request budget consideration for those priorities.

The options discussed in this thesis should provide legislators and homeland security and emergency management professionals with innovative ideas and methods to develop innovative solutions to sustainability funding for state and local homeland security initiatives.



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## **I. INTRODUCTION**

### **A. PROBLEM STATEMENT**

States cannot depend upon the federal government to honor its commitments to fund homeland security initiatives at the state and local level. This is evidenced by the steady decline in funding for state and local initiatives over the past several federal fiscal years (FY). In the 1990s, the Emergency Management Performance Grant (EMPG) was created.<sup>1</sup> As will be demonstrated below, funding for EMPG did not keep pace with demand.

There are seven homeland security grant programs: Urban Area Security Initiative (UASI); State Homeland Security Grant Program (SHSGP); Law Enforcement Terrorism Prevention Program (LETPP); Metropolitan Medical Response System (MMRS); Citizen Corps Program (CCP); Critical Infrastructure Protection Program (CIP) and EMPG. This paper focuses on the four programs that have been most beneficial to rural states: SHSGP; LETPP; UASI; and EMPG.

Three of the four programs, SHSGP, LETPP and EMPG, were funded pursuant to the provisions of the USA PATRIOT Act, which set a minimum allocation to states of 0.75 percent of the total amount appropriated in the fiscal year for grants.<sup>2</sup> According to the Congressional Research Service, the Administration's request to shift funding from SHSGP and UASI to LETPP in FFY08 could result in fewer funds being available to the states.<sup>3</sup>

As early as 2004, it was apparent the federal funding mechanism was not working well. Local units of government were required to spend their own funds and wait for the

---

<sup>1</sup> Beverly Bell, *NEMA 2006 Biennial Report* (Lexington, KY: National Emergency Management Association, March 2006), 9.

<sup>2</sup> *Department of Homeland Security Grants to State and Local Governments: FY2003 to FY2006, December 22, 2006, CRS Report to Congress*, Order Code RL33770 (Washington, D.C.: Congressional Research Service, December 22, 2006), CRS-21.

<sup>3</sup> Jennifer E. Lake and Blas Nunez-Neto, *Homeland Security Department: FY2008 Appropriations*, (Washington, D.C.: Congressional Research Service, May 17, 2007).

Department of Homeland Security (DHS) to reimburse them. Cities complained the appropriate level of funding was not being realized by local units of government. The problem was created in part by federal bureaucracy and in part by state bureaucracy.

Beyond the reduction of federal funding for grant programs, states are still dependent upon the federal government to provide homeland security funds for state and local projects. In FY06, 21 states depended upon the federal government for 100 percent of their homeland security funding, 17 were between 75 and 99 percent, three were between 50 and 74 percent, five were less than 50 percent and only one relied totally upon state funding.<sup>4</sup> For FY07, 20 states depended upon the federal government for 100 percent of their homeland security funding, 15 were between 75 and 99 percent, eight were between 50 and 74 percent, four were between one and 49 percent and only three relied totally upon state funding.<sup>5</sup>

Table 1. How State Homeland Security Office/Division/Departments Are Funded<sup>6</sup>

<b>Responding State</b>	<b>2006 % Federal Grants</b>	<b>2006 % State Funds</b>	<b>2006 % Other</b>	<b>2007 % Federal Grants</b>	<b>2007 % State Funds</b>	<b>2007 % Other</b>
AK	75	25		75	25	
AL	82	18		99	1	
AR	100			100		
AZ	100			100		
CA	100			100		
CO	95	5		95	5	
CT	90	10		75	25	
DC	100			100		
DE	78	22		20	80	
FL			N/A	68	32	
GA	80	20			100	
HI	100			100		
IA	65.6	19.4	15	66.3	19.6	14.1

<sup>4</sup> *National Emergency Management Association FY06 State Director Annual Survey* (Lexington, KY: National Emergency Management Association, March 2006).

<sup>5</sup> *National Emergency Management Association FY07 State Director Annual Survey* (Lexington, KY: National Emergency Management Association, March 2007), 10.

<sup>6</sup> *National Emergency Management Association FY06 State Director Annual Survey; National Emergency Management Association FY07 State Director Annual Survey.*

<b>Responding State</b>	<b>2006 % Federal Grants</b>	<b>2006 % State Funds</b>	<b>2006 % Other</b>	<b>2007 % Federal Grants</b>	<b>2007 % State Funds</b>	<b>2007 % Other</b>
ID	90	10		100		
IL	100			100		
IN	15	85		80	20	
KS	100			50	50	
KY	80	20		90	10	
LA	80	20		70	30	
MA	100			100		
MD				100		
ME	100			100		
MI	39	61		96.4	1.6	2
MN	60	40		68.76	24	7.24
MO	75	25		100		
MS	79	21		79	21	
MT	100			100		
NC	100			100		
ND	85	13	2	90	10	
NE	75	25		75	25	
NH	100				100	
NJ	96	4		96	4	
NM	10	90			100	
NV	60	40		65	35	
NY		100		19	81	
OH	20-25	75-80		20-25	75-80	
OK	100			60	40	
OR	98	2		100		
PA	100			100		
RI	100			75	25	
SC	100			100		
SD	100			100		
TN	44	30	26	67	33	
TX	100			100		
UT	95	5		95	5	
VA	75	25		20	80	
VT	100			100		
WA	2	0.1	97.9	90	10	
WI	In 2006 WI had no central homeland security entity.			100		
WV	100			80	20	

In its report dated January 5, 2007, *Overview: FY 2007 Homeland Security Grant Program*, DHS sounded a warning for all rural and low population states. It stated that the 2007 funding priorities improve DHS's "primary commitment to risk-based funding" and went on to say it was committed to "assisting with regional planning and security coordination."<sup>7</sup> In "political speak" that appears to be an adoption of a philosophy geared toward high population areas and away from more rural jurisdictions. As a result, rural states need to develop a strategy that depends less upon the federal government and more upon themselves and their citizens, both individual and corporate.

## **B. RESEARCH QUESTION**

What alternatives are available to states and local units of government to provide for homeland security initiatives in light of reductions in federal funding? The research looks at traditional "in the box" solutions and, hopefully, will find some possible "out of the box" strategies to provide guidance.

## **C. SIGNIFICANCE OF RESEARCH**

Almost universally, state and local units of government have depended upon the federal government to fund a majority of their homeland security initiatives. This thesis will review and discuss possible alternatives available to states and local units of government to supplement or supplant federal funding. Additionally, this thesis will examine the concept of states and local units of government becoming self-sufficient in order to advance their own and national homeland security.

The significance of this research is that there is little information available regarding funding of homeland security initiatives by state and local units of government other than utilizing federal grant monies. Given the trend in federal funding and the demands placed upon non-federal units of government to provide for the general populace's well-being, some alternatives need to be addressed.

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<sup>7</sup> *Department of Homeland Security, Overview: FY 2007 Homeland Security Grant Program*, (Washington, D.C.: DHS, January 5, 2007), 1.

The research will examine traditional methods used by governments to finance any governmental need. In addition, it will examine whether other methods may prove efficacious in making up the shortfall created by the federal government's failure to provide sustainability funding.

#### **D. LITERATURE REVIEW**

The issue discussed within this literature review is described by the question: "What possible solutions might state and local units of government consider to lower the cost of prevention, preparation, response and recovery and/or to replace the federal funding shortfall?" The decline in funding from the DHS is evidenced in a plethora of books, reports and articles. Between FY2003 and FY2006 that decline was negative 56.8 percent.<sup>8</sup>

According to the National Conference of State Legislatures' *Task Force on Protecting Democracy Final Report*, state legislatures need to closely monitor how homeland security grant funds are being expended. "This becomes extremely critical to ensure the long term viability of new programs as future federal funding cannot be predicted and federal funds may require a maintenance-of-effort contribution from the state."<sup>9</sup>

A review of available literature is not, unfortunately, very enlightening. Much of the literature discusses the need for additional funding. Funding by the Congress of the United States, not the individual states or local units of government, seems to be the

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<sup>8</sup> *Department of Homeland Security Grants to State and Local Governments: FY2003 to FY2006*, December 22, 2006, CRS Report to Congress, CRS-21.

<sup>9</sup> *Task Force on Protecting Democracy Final Report* (Denver, CO: National Conference of State Legislatures, July 2002), 6.



preferred source.<sup>10</sup> Rhetoric of a similar nature can be read in testimony presented to members of Congress. See for example, Prepared Statement of Vice Chair Lee H. Hamilton, et al., before the Committee On Homeland Security and Governmental Affairs, United States Senate, January 9, 2007, 6; Prepared Statement of Testimony Before the Committee on Homeland Security and Governmental Affairs, United States Senate, Richard A. Falkenrath, Deputy Commissioner for Counterterrorism, New York Police Department, September 12, 2006, 32; and Testimony for Senate Budget Committee (no date) by Greg Wilz, Director, North Dakota Department of Emergency Services, Division of Homeland Security, 4.

Secretary Chertoff has stated DHS is “not signing up to fund fusion centers in perpetuity.”<sup>11</sup> He went on to say, “[W]e expect every community to continue to invest in sustaining these very important law enforcement tools.”<sup>12</sup> While those comments referenced only fusion centers, they appear to be counter to the majority of information available, which suggests DHS should increase funding levels.

Some entities are looking at alternative funding. One of the Summary Points of *A Governor’s Guide to Homeland Security* is to “develop funding strategies and incentives

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<sup>10</sup> Examples include The Brookings Institution article by Michael E. O’Hanlon, published in *The Washington Times*, June 9, 2006, “Homeland Security Funding: Urban Area Grant Maze” that states, “The urban area grant program should be at least doubled;” the July 26, 2006 press release from The United States Conference of Mayors stating 80 percent of the mayors did not believe their cities had received sufficient federal resources to achieve communications interoperability; the statement of issues by the National Emergency Management Association on February 23, 2007, stating Congress should increase EMPG funding by \$175 million for 2008; the update of the Center for Strategic and Budgetary Assessments, dated June 26, 2006, stating “it is possible that substantially more funding may be needed than has been proposed by the administration;” one of the summary points in the National Governors Association Center for Best Practices publication “A Governor’s Guide to Homeland Security” stating the need to “develop funding strategies and incentives that encourage greater local, state, and **federal** participation” (emphasis added); Rick Brazier’s September 2006 master’s thesis at the Naval Postgraduate School suggesting increased federal funding for training; “The Iowa Homeland Security Strategy” from 2004, updated in 2006, both stating a goal of “increase funding coming into Iowa;” and, the National Conference of State Legislatures 2008-2009 policy statements includes “the National Conference of State Legislatures (NCSL) urges Congress and the administration to maintain and improve funding for homeland security” and further urges Congress to “fund the Emergency Management Planning Grants (EMPG) at a level that meets current needs.”

<sup>11</sup> *Fusion Centers: Issues and Options for Congress*, Order Code RL34070 (Washington, D.C.: Congressional Research Service, July 6, 2007), CRS-44.

<sup>12</sup> *Ibid.*

that encourage greater **local, state, and federal participation**”<sup>13</sup> (emphasis added). Similarly, the recommendations submitted by the Advisory Committee for the Study and Structure of Emergency Management in Iowa suggests a surcharge on insurance policies and a “voluntary and/or share allocation for private and tax exempt enterprises” because they enjoy the benefits of emergency management, but are not required to pay taxes to support those services. Additionally, the recommendation stated “such business and industry, may pose significantly higher risks than average” and should, therefore, pay the allocation.<sup>14</sup> The counter argument to those suggestions is that small portions of the economy are made responsible for funding programs that benefit the entire populace. These suggestions are very general in nature.

A possible solution involving more than government dollars suggests the development of public and private partnerships. Developing public and private partnerships to provide essential homeland security supplies and equipment in time of need may be a viable alternative to tax or fee funding. It is certainly one that deserves further scrutiny based upon corporate examples.<sup>15</sup> Benefits have been seen in programs developed by Wal-Mart, AT&T, The Home Depot, and others. While prevention is not part of the program, preparation, response and recovery are included. The obvious concern about such a program will be the funding private companies will have to commit for public welfare and whether there is sufficient return for their investors to warrant participation.

## **E. METHOD**

Research using available literature for this topic has proven difficult as there is little literature available for review. To the extent such literature is available, however, it was examined to determine if any innovative suggestions existed. To the extent they

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<sup>13</sup> *A Governor's Guide to Homeland Security* (Washington, D.C.: National Governors Association Center for Best Practices, March 14, 2007), 63.

<sup>14</sup> *Local Emergency Management Systems: Report and Recommendations for a Stronger Iowa* (Des Moines, IA: Advisory Committee for the Study of the Structure of Emergency Management, February 1, 2006), 21, 32.

<sup>15</sup> Michael Peltier, “Retail Responders,” *HSToday*, 4, no. 6 (June 2007): 28-32.

existed, most suggestions were “inside the box.” They dealt with additional taxing authority or increasing fees, e.g., Iowa’s suggestion regarding insurance policies. The focus of this thesis is to challenge the reader to develop “outside the box” solutions that will not necessarily increase the tax burden on any particular segment of the population or business community.

In addition, the author developed a survey with the assistance of Sujit M. CanagaRetna, Senior Fiscal Analyst, and Jeremy L. Williams, Policy Analyst, both of the Council of State Governments, Southern Legislative Conference. The survey was refined and revised after several discussions among the drafters and review by Dr. Lauren Wollman, Center for Homeland Defense and Security. The survey was sent to the emergency management and homeland security departments in all 50 states. The responses were analyzed for innovative emergency management and homeland security programs enacted in recent years to respond to diminished federal funding. The survey document appears in the Appendix.

Further, the author conducted interviews of homeland security professionals in the United States and several foreign embassies to determine whether there were innovative funding solutions that could be used at the state and local levels. Those interviews included homeland security professionals at the Swedish, Australian, German and British embassies in Washington, D.C. Additionally, the author interviewed a homeland security professional in Ottawa, Ontario, Canada regarding how Canada funds its homeland security initiatives.

Other persons interviewed included Major General (Ret.) Gregory Gardner, Department of Homeland Security Supervisory Protective Security Advisor for the Midwest Region, Major General Tod Bunting, Adjutant General for the state of Kansas, Bill Chornyak, Deputy Director, Kansas Division of Emergency Management – Homeland Security, and Randy Mettner, Executive Assistant to the Adjutant General. In addition, the author interviewed William F. Lawson, Regional Director, Business Executives for National Security (BENS) regarding existing and proposed BENS programs.

In order to provide background information to the reader regarding state budgeting processes, the author worked with several members of the Kansas Legislative Research staff. Principal among those persons were Alan Conroy, Director, and Chris Courtwright, Principal Analyst.

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## II. WHAT HAVE THE FEDS BEEN DOING AND HOW HAVE STATES RESPONDED?

From its inception, the United States of America has been associated with what today could be called terrorism. The founding fathers, of course, used different terminology for their activity, but when viewed from the British monarch's frame of reference, under today's definition, the clandestine and disruptive actions of the colonials in establishing a new nation can only be considered terrorism.

The founding fathers used eloquent terms to describe the rights of the people to change the existing governmental structure:

We hold these truths to be self-evident, **that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. . . . That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government . . .**<sup>16</sup> (emphasis added)

The recitation of the justification for armed insurrection did not end there, however. The founding fathers went on to state:

But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, **appealing to the Supreme Judge** of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these united Colonies are, and of Right ought to be Free and Independent States, that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War . . .<sup>17</sup> (emphasis added)

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<sup>16</sup> U.S.C. *Declaration of Independence*, ¶2.

<sup>17</sup> Ibid.

So began a nation that today has become one of the largest targets of terrorism in the world. The colonials based their actions on the rights conferred by the highest authority, the “Creator” and “Supreme Judge of the world.” In a sense, the colonials might have been termed religious terrorists, but they might also have been called ethno-terrorists as long as “ethno” is defined as the new nation they established. The nation was established for political reasons by acts that were dangerous to human life and were a violation of the criminal law as set forth by English laws. Additionally, the acts were intended to influence the policy of the Crown by intimidation or coercion. Such acts would clearly fall within the definition of terrorism today.<sup>18</sup>

Various sections of the Constitution make the United States a potential haven for and target of terrorists, e.g.,: Amendment 1, Freedom of Religion, Speech and Press; Amendment 2, The Right to Bear Arms; Amendment 4, Searches and Seizures; Amendment 5, Criminal Prosecutions; Due Process of Law; Eminent Domain; and Amendment 14, Rights and Immunities of Citizens.<sup>19</sup> The first four foregoing Amendments are part of what is now known as the Bill of Rights, while the last is what causes the others to be applicable to the individual states. The Bill of Rights, especially those specific amendments mentioned above, protects individuals from government intrusion into their private lives. It is more difficult to prevent terrorism if government cannot monitor the activities of individuals in their private lives. The very thing, therefore, that makes the United States of America great is what makes it a potential haven for and a vulnerable target of terrorists.

According to David Tucker in the *Unconventional Threat to Homeland Security, An Overview*, clandestine activity alone is not effective; it must be accompanied by a political strategy.<sup>20</sup> Terrorists begin their clandestine activity for a variety of reasons, but generally, some perceived injustice has occurred<sup>21</sup> that has not been addressed by the

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<sup>18</sup> 18 U.S.C. § 2331(5).

<sup>19</sup> U.S.C. *Constitution of the United States of America*.

<sup>20</sup> David Tucker, *The Unconventional Threat to Homeland Security, An Overview* (Monterey, CA: Center for Homeland Defense and Security, n.d.), 5.

<sup>21</sup> *Ibid.*, 7.

“normal” political process. Organizations that choose clandestine terrorist activities in the United States generally experience a life expectancy of approximately two years, which is shorter than the mean. This is presumably due to the availability of alternative methods to address the perceived injustice.<sup>22</sup>

The very measures cited above that protect the freedoms enjoyed by those who live in the United States may actually give rise to the number of terrorist organizations born here.<sup>23</sup> The First Amendment not only protects what a person says, it protects how a person worships. Discussion at places of worship can be used to foment dissent against the government or members of the public while not technically violating any laws, see for example, Westboro Baptist Church, Topeka, Kansas. That dissent can escalate into terrorism, albeit by a “lone wolf,” as in the case of the acts of violence of the pro-life movement committed against physicians who perform abortions.<sup>24</sup> Until the act of violence, which is criminal, turns the activity into terrorism, the activity is protected by the First Amendment freedom of speech, as described by Michael Bray in *A Time to Kill*.

As important as the protections of the Amendments mentioned above is the attitude expressed in the Declaration of Independence. It openly supports insurgency, which has been defined by Dennis Pluchinsky to be terrorism with a claim to real estate.<sup>25</sup> One of the most notorious terrorists nurtured in the United States was Timothy McVeigh, a resident of Herington, Kansas. He was an ardent supporter, at least in his own mind, of the rights set forth in the Amendments above, especially the Second Amendment.<sup>26</sup> Blowing up the Murrah Building in Oklahoma City was the manifestation of his belief that citizens have the right to stop the government from infringing further upon the rights of private citizens.<sup>27</sup>

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<sup>22</sup> Tucker, *The Unconventional Threat to Homeland Security, An Overview*, 13.

<sup>23</sup> *Ibid.*, 14.

<sup>24</sup> David Brannan, “Left- and Right-wing Political Terrorism,” *The Politics of Terrorism*, ed. Teong Hin Tan (London: Routledge, 2006), 61.

<sup>25</sup> Dennis Pluchinsky, “Ethnic Terrorism: Themes and Variations,” *The Politics of Terrorism*, ed. Teong Hin Tan (London: Routledge, 2006), 36.

<sup>26</sup> Brannan, “Left- and Right-wing Political Terrorism,” 59.

<sup>27</sup> *Ibid.*



Christopher Hewitt, in *Understanding Terrorism in America: from the Klan to al Qaeda*, recites a history of terrorism in the United States from the 1950s to September 11, 2001. During that time, domestic terrorism accounted for almost eighty percent of the incidents and ninety percent of the deaths related to terrorist activities within the United States. He again points to values enunciated in the founding documents, e.g., democracy, tolerance, and freedom of speech, as reasons the United States was attacked by terrorists.<sup>28</sup> One of the primary reasons for terrorism, according to Hewitt, is political alienation. He cites, as examples, Communists, Socialists, Birchers, and Neo-Nazis.<sup>29</sup> How was it, again, that the United States was formed? Political alienation from the Crown? (See Declaration of Independence.)

Hewitt also discussed Islamic fundamentalist terrorism. He suggested the ability to attack within the United States is based upon poor immigration control and the growth of an Islamic community in the United States.<sup>30</sup> Without the protections of the First Amendment for free speech and freedom of religion, one must question whether the Islamic community in the United States would or could have grown to a size that is capable, intentionally or unintentionally, of concealing militant Islamic terrorists, or whether puritanical bigotry would have prevented such growth.

Finally, Hewitt suggested that “terrorism is used by those who see little chance of getting what they want through regular political channels. They turn to bullets because ballots do not work.”<sup>31</sup> Do the names Boston, Lexington and Concord come to mind? This violence is the result of terrorists having their hopes raised (read “freedom of speech” and “freedom of religion”) only to be dashed by the political process.<sup>32</sup> Given other freedoms of the Bill of Rights, e.g., right to bear arms, freedom of assembly,

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<sup>28</sup> Christopher Hewitt, *Understanding Terrorism in America: From the Klan to al Qaeda* (New York, NY; Routledge, 2003), 20.

<sup>29</sup> Ibid., 24.

<sup>30</sup> Ibid., 44.

<sup>31</sup> Ibid., 50.

<sup>32</sup> Ibid., 48.

freedom from unreasonable searches and seizures, and due process, those so disenchanted were, and are, able to commit acts of terrorism before the government was, or is, able to step in and prevent the activity.

It can be argued that legislation passed in the wake of September 11<sup>th</sup>, specifically in October 2001, significantly curtails the ability of terrorists in the United States to participate in terrorist activity. The act, commonly known as the USA PATRIOT Act (Act),<sup>33</sup> provides the government with tools that many claim curtail the rights granted by the Constitution and the Bill of Rights. If that is the case, and if Hewitt and others are correct, the Act will simply add fuel to the fire of clandestine activity. The lack of political solutions available to the founding fathers of the United States of America was the impetus that caused them to act clandestinely and to create a new nation. This lack of political solutions led them to insurgency, or terrorism, depending upon one's frame of reference. It also led to the drafting of the documents that citizens of the United States rely upon to express their views and live their lives, to wit: the Declaration of Independence, the Constitution and the Bill of Rights. These rules, by which citizens of the United States live, protect their right to say what they believe and to practice whatever religion they wish. The rules also protect citizens against unreasonable searches and seizures, permit them to bear firearms and require the government to follow due process of law if it believes those citizens should be prosecuted for violating some rule of law. It is those very basic tenets of the government in the United States that permit, and will continue to permit, terrorist organizations to form and act within the jurisdiction of the United States of America. One of the costs of a free and open society is the inability of the government to stop every potential act of terrorism due to the constraints placed upon it by the laws that are its very foundation. As Katherine Lee Bates wrote in her famous poem *America the Beautiful*:

America! America!  
God mend thine every flaw,  
Confirm thy soul in self-control,  
Thy liberty in law!

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<sup>33</sup> Public Law 107-56, *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001* (USA PATRIOT Act).

The self-control is exemplified by the rules established in the Constitution and the Bill of Rights. Those rules of law protect, or confirm, the liberty that all citizens of the United States enjoy. Unfortunately, they also make the United States a haven for and a target of terrorists. Freedoms and rights have a cost. Who should bear those costs and how they should be borne is the subject of this thesis.

## **A. PRIOR TO 2007**

Federal funding of homeland security and disaster assistance is not new. In 1803, as a result of a fire that decimated Portsmouth, New Hampshire, the U.S. Congress adopted its first disaster relief legislation. Several other disasters were funded on an ad hoc basis. In 1929, the Reconstruction Finance Corporation became the first federal disaster response agency by dispensing federal disaster assistance. In 1950, Congress passed the Federal Civil Defense Act and funded federal and state civil defense programs. Notably, the act mandated that preparedness was a joint responsibility of federal, state and local governments with federal monies funding the programs.<sup>34</sup>

In 1979, the Federal Emergency Management Agency was created.<sup>35</sup> By the late 1980s, state and local agencies were paying the bulk of the costs of disaster relief programs. In the 1990s, the Emergency Management Performance Grant program (EMPG) was created.<sup>36</sup> As discussed below, funding for EMPG did not keep pace with demand.

In making recommendations for the provision of homeland security, the 9/11 Commission stated:

Recommendation: Hard choices must be made in allocating limited resources. The U.S. government should identify and evaluate the transportation assets that need to be protected, set risk-based priorities for defending them, select the most practical and cost-effective ways of doing

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<sup>34</sup> *National Emergency Management Association NEMA 2006 Biennial Report* (Lexington, KY: 2006), 8.

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*, 9.

so, and then develop a plan, budget, and funding to implement the effort. **The plan should assign roles and missions to the relevant authorities (federal, state, regional, and local) and to private stakeholders.** (Emphasis added)<sup>37</sup>

That recommendation, albeit directed at transportation, clearly set forth the Department of Homeland Security (DHS) philosophy and identified “regional” entities as relevant parties. “Regional” parties are seldom mentioned in the funding discussion.

The seven homeland security grant programs, set forth below, have experienced a decline in funding from FY2003 through FY2006, as can be seen in Table 2.<sup>38</sup>

Table 2. From CRS Department of Homeland Security Grants to State and Local Governments: FY2003 to FY2006

### State Allocations of Office of Grants and Training Homeland Security Grants

(all amounts in millions except dollar per capita figures)

State and Program	FY2003 to FY2006 Total	Amount Allocated (in millions)					Per Capita Amount				
		FY2003	FY2004	FY2005	FY2006	Percent Change* FY2003 to FY2006	FY2003	FY2004	FY2005	FY2006	Percent Change* FY2003 to FY2006
Alabama											
Population**							4,480,139	4,501,862	4,525,375	4,557,808	1.7%
SHSGP	\$88.64	\$34.51	\$28.14	\$17.69	\$8.30	-75.9%	\$7.70	\$6.25	\$3.91	\$1.82	-76.4%
LETPP	\$20.81	na	\$8.35	\$6.43	\$6.03	-27.8%	\$0.00	\$1.85	\$1.42	\$1.32	-28.7%
EMPG	\$11.53	\$2.75	\$2.89	\$2.90	\$2.99	8.7%	\$0.61	\$0.64	\$0.64	\$0.66	6.9%
MMRS	\$4.76	\$1.32	\$1.60	\$0.91	\$0.93	-29.5%	\$0.29	\$0.36	\$0.20	\$0.20	-30.7%
CCP*	\$1.43	\$0.31	\$0.58	\$0.22	\$0.32	3.2%	\$0.07	\$0.13	\$0.05	\$0.07	1.5%
UASI	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	na	\$0.00	\$0.00	\$0.00	\$0.00	na
CIP	\$3.34	\$3.34	na	na	na	na	\$0.75	na	na	na	na
Total	\$130.51	\$42.23	\$41.56	\$28.15	\$18.57	-56.0%	\$9.43	\$9.23	\$6.22	\$4.07	-56.8%

Total reductions for the State Homeland Security Grant Program (SHSGP) between 2003 and 2006 were 74.4 percent. Reductions for the Law Enforcement Terrorism Prevention Program (LETPP) for the same period were 23.2 percent; Urban Area Security Initiative (UASI) increased overall 19 percent, but some metropolitan areas actually experienced a per capita decline;<sup>39</sup> Emergency Management Performance Grant

<sup>37</sup> National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report* (Washington: U.S. Government Printing Office, 2004), 406.

<sup>38</sup> Steven Maguire and Shawn Reese, “Department of Homeland Security Grants to State and Local Governments: FY2003 to FY2006,” *CRS Report to Congress, Washington: Congressional Research Service, December 22, 2006*, Order Code RL33770, CRS-21.

<sup>39</sup> Ibid., CRS-6 & 7.

Program (EMPG) increased 8.7 percent; Metropolitan Medical Response System (MMRS) decreased 31.9 percent; and Citizen Corps Program (CCP) increased 2.2 percent. The Critical Infrastructure Protection Program CIP was only funded in 2003.<sup>40</sup>

## **B. SINCE 2007**

What is new about federal funding is the basis upon which funds are disbursed. Funds are now being allocated based upon a risk assessment formula developed by the federal government. Beginning in FY2006, that assessment focused primarily upon population, which is a concern for rural states and communities that are not densely populated. Previously, for FY2002 through FY2007, the USA PATRIOT Act allocated each state not less than 0.75 percent of the total funds appropriated.<sup>41</sup> The remainder was allocated to each state in direct proportion to the state's percentage of the nation's population.<sup>42</sup>

The FY2007 and FY2008 appropriations and the requested FY2009 appropriations set forth in the following table project a continued funding decrease, albeit there was an increase in FY2008 funding. The original FY2008 Administration request for all state and local homeland security programs was \$925 million less than Congress appropriated for FY2007.<sup>43</sup> Congress, however, funded more than the Administration requested. It should be noted there was no funding for LETPP, per se, in FY2008 or requested in FY2009. It was funded in FY2008 and is proposed to be funded in FY2009 from both SHSGP and UASI.<sup>44</sup>

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<sup>40</sup> Maguire and Reese, "Department of Homeland Security Grants to State and Local Governments: FY2003 to FY2006," CRS-8 & 9.

<sup>41</sup> Ibid., CRS-3.

<sup>42</sup> Ibid., CRS-12.

<sup>43</sup> Shawn Reese, "FY2008 Appropriations for State and Local Homeland Security," *CRS Report to Congress, Washington: Congressional Research Service, February 5, 2007*, Order Code RS22596, CRS-1.

<sup>44</sup> Shawn Reese, "FY2009 Appropriations for State and Local Homeland Security," *CRS Report to Congress, Washington: Congressional Research Service, February 7, 2008*, Order Code RS22805, CRS-3.

Table 3. State and Local Homeland Security Assistance Programs: FY2007 and FY2008 Appropriations and FY2009 Budget Authority Request (\$000,000)<sup>45</sup>

<b>Program</b>	<b>FY2007 Appropriation</b>	<b>FY2008 Appropriation</b>	<b>FY2009 Budget Request</b>
State Homeland Security Grant Program	\$525	\$950	\$200
Law Enforcement Terrorism Prevention Program	\$375	_____	_____
Urban Area security Initiative	\$770	\$820	\$825
Emergency Management Performance Grants	\$200	\$300	\$200
<b>Total</b>	<b>\$1,870</b>	<b>\$2,070</b>	<b>\$1,225</b>

The Administration has proposed reducing funding in FY2009 on most state and local homeland security programs, except UASI and two others. Its proposal would amount to \$2.0 billion less than the amount of the FY2008 Congressional appropriation.<sup>46</sup>

### **C. STATE RESPONSES**

Based upon the unmistakable message from DHS in its report dated January 5, 2007, *Overview: FY 2007 Homeland Security Grant Program*, rural states need to develop a self-reliant strategy. Rural states must develop solutions for state and local units of government to lower the cost of prevention, preparation, response and recovery and/or to make up the federal funding shortfall. In the alternative, rural states will have to develop a tax strategy to replace federal funds that have been lost to them. Without such solutions, rural states, and their local units of government, will fall behind in their ability to prevent acts of terrorism; they will also be unable to adequately prepare for, respond to or recover from those acts or natural disasters.

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<sup>45</sup> Reese, "FY2008 Appropriations for State and Local Homeland Security," CRS-1; "FY2009 Appropriations for State and Local Homeland Security," CRS-3.

<sup>46</sup> Reese, "FY2008 Appropriations for State and Local Homeland Security," CRS-1.

As mentioned above, as early as 2004 it was apparent the federal funding mechanism was not working well. Cities and states were required to expend their own funds and await reimbursement from the federal government. Massachusetts Governor Mitt Romney, co-chair of a task force to determine the cause of funding delays, stated, “The standard grant process and purchasing procedures that exist in our country at all levels of government don’t work terribly well if your objective is speed...[T]hey have inherent within them a slow, methodical process.”<sup>47</sup> Two examples of the slow process were cited in a Conference of Mayors report, which stated in June 2004 over half of the 215 cities surveyed had not received FY2003 Federal First Responder/Critical Infrastructure funding and over one quarter had not received FY2003 State Domestic Preparedness funding.<sup>48</sup> The task force also cited the Cash Management Improvement Act as part of the problem. The act is what requires cities to expend their own funds and seek reimbursement.<sup>49</sup>

States needed then, as now, to respond in an innovative way so local units of government could realize the benefits of the grants. Several states, e.g., Kansas, Nebraska and South Carolina, heeded the call and developed mechanisms to respond to the lack of alacrity in payments and the need for better understanding of the processes.<sup>50</sup>

Kansas, for example, in order to receive greater benefit from the funds that were being received, established a password protected website local officials could access to purchase materiel using grant funds. The funds never actually went to the local units of government, but were placed in an account at the state level, and purchases were credited against the balance in the account. This innovative solution provided faster access to the funds, with the benefits of the greater buying power of and, therefore, discounts available to the state.

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<sup>47</sup> Christopher Logan, “Politics and Promises: Rhetoric Meets the Reality of a Slowdown in Homeland Security Funding,” *Securing the Homeland: A Special Report From Governing Magazine and Congressional Quarterly* (October 2004): 12.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid., 14.

<sup>50</sup> Ibid., 15.

State and local units must look first and foremost to their own initiative to fund homeland security needs. One of the most important initiatives states can use is the power of the purse. Although homeland security funds come from the federal government and, at least in some states, e.g., Kansas, do not pass through the normal appropriations process, some state legislatures have closely monitored how homeland security grant funds are being expended. According to the National Conference of State Legislatures' (NCSL) *Task Force on Protecting Democracy Final Report*, "This becomes extremely critical to ensure the long term viability of new programs as future federal funding cannot be predicted and federal funds may require a maintenance-of-effort contribution from the state."<sup>51</sup>

Twenty-five states have disaster funds with monies appropriated as needed to keep an adequate balance in the accounts.<sup>52</sup> These accounts are considered special appropriation accounts to be used only if certain criteria are met, e.g., a disaster or terrorist attack occurs.

Working with the Council of State Governments Southern Legislative Conference, the author drafted a survey that was sent to the homeland security and/or emergency management directors in all 50 states.<sup>53</sup> The results of the survey have been published in *Innovative Programs in Funding State Homeland Security Needs: A Special Series Report of the Southern Legislative Conference* (SLC Report). The purpose of the survey was to glean information from states regarding homeland security programs and innovations necessitated by diminished federal funding.<sup>54</sup> A copy of the survey document appears in the Appendix

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<sup>51</sup> National Conference of State Legislatures Task Force on Protecting Democracy, "*Let's Roll!*" *A Call for State Action to Provide Homeland Security* (Denver: National Conference of State Legislatures, July 2002), 6.

<sup>52</sup> Ibid.

<sup>53</sup> Sujit M. CanagaRetna and Jeremy L. Williams, *Innovative Programs in Funding State Homeland Security Needs: A Special Series Report of the Southern Legislative Conference* (Atlanta: Southern Legislative Conference, June 2008), 2.

<sup>54</sup> Ibid.



While the responses received were thorough, they were very focused on how states utilize federal funding. The information provided insight into programs that might be shared among the states, but there appeared to be very few innovative funding mechanisms. Some of the programs, however, might actually lead to a reduction in funding requirements, which in itself might be considered a mechanism for funding more critical needs.

To maximize efficacy of federal funds, Kansas has created several programs. The Vulnerability Assessment Team, which has been recognized by DHS for its success, evaluates federally identified critical infrastructure sites, schools and hospitals. The Communications Assessment Team is comprised of public and private telecommunications experts, one of its charges being to develop a financial plan for statewide emergency communications. Kansas has also developed the Eisenhower Training Center and “Crisis City” using state and federal funds. The training center is geared toward police, fire, local emergency managers and the National Guard, 85 percent of whom are volunteers. “Crisis City” is a training center that, when completed, will consist of seven venues on 36,000 acres and is geared toward a cooperative training and working environment.<sup>55</sup> It may actually prove to be a future revenue source as interest has already been expressed by Army North in utilizing the facilities for training exercises. The total state investment at the present time is \$9 million.<sup>56</sup>

The SLC Report indicates that notwithstanding the Emergency Management Assistance Compact (EMAC) federal law, and the fact that all 50 states are EMAC members, several states have entered into additional agreements to combine efforts on a regional basis in preparing for homeland security.<sup>57</sup> Such agreements join the forces of as few as two to as many as 12 states.<sup>58</sup>

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<sup>55</sup> CanagaRetna and Williams, 20.

<sup>56</sup> Kansas Secretary of State, *2007 Session Laws of Kansas* (Topeka, KS: State of Kansas, 2007), Ch. 201.

<sup>57</sup> CanagaRetna and Williams, 33.

<sup>58</sup> *Ibid.*, 34.

Public-private partnerships, according to the SLC Report, are emerging as the most common innovation for providing sustainability funding for homeland security initiatives. The SLC Report states:

Selling or leasing state assets by entering into public-private partnerships has emerged as a feasible option for many policymakers. The state assets in question include highways, lotteries, student loan portfolios, parking meters, state-run liquor stores, naming rights for transit stations and sports stadiums, commuter railroads, airports, bridges, and advertising space on bus shelters, newsstands and garbage cans. In light of the fact that raising taxes to fund an increasing number of transportation and other essential projects remains politically volatile, policymakers continue to pursue a range of alternate funding mechanisms to generate revenue.<sup>59</sup>

The danger inherent in public-private partnerships mentioned above is the terms of the agreement. Unless provision is made for continuing funding from such sales, the revenue received is considered “one-time revenue” and cannot be considered for long-term sustainability purposes. Although no official record exists concerning the issue, Kansas has debated such funding mechanisms and rejected them for that very reason.

The SLC Report discusses several public-private partnerships in various states. The one mentioned for Kansas will be discussed further in Chapter V.

While the foregoing examples may provide legislators with some guidance for innovative funding, it is clear from the concerns expressed in the survey results much more is needed. For additional guidance to politicians (and, it is hoped, statesmen), the survey inquired regarding the top three concerns states have in responding to natural and man-made emergencies. Whether for natural or man-made emergencies, 65 percent of the responding states indicated the number one concern was interoperable communications. Intelligence and information sharing was the second highest priority (35 percent) and mass care and medical surge capabilities came in third (29 percent). Three of the responding states, Kansas, Colorado and Iowa, indicated the same basic concerns

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<sup>59</sup> CanagaRetna and Williams, 35.

regardless of type of emergency. Kansas' philosophy is there are key, critical capabilities that must be established to enable effective response, regardless of the emergency's cause.<sup>60</sup>

The purpose of Question X of the SLC survey regarding concerns was to provide legislators with some knowledge of what emergency managers and homeland security professionals believe are the priorities for funding. Armed with that knowledge, legislators should be able to prioritize spending programs in their home jurisdictions based upon the considered evaluation of those professionals. It is at this point in the process the legislators will either be a politician and consider programs based upon votes at the next election, or a statesman and make decisions based upon what is best for the future of the entire jurisdiction. Those decisions are not easily made. The statesman must weigh the value of social programs versus the value of homeland security programs that have been prioritized with the input of the homeland security professionals in the jurisdiction.

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<sup>60</sup> CanagaRetna and Williams, 48-50.

### **III. INSIDE A LEGISLATOR'S MIND**

For many reading this thesis, the title of this chapter may provide the reader “hope” to understand how legislators reach decisions. Such is not the author’s intent. Instead, this chapter will focus on the budget process. During the legislative session, a majority of a legislator’s time is spent on budget related issues. This chapter is not meant to be an exhaustive academician’s treatise on budgeting. It is necessary, however, to get into the minds of legislators to understand how budgeting impacts where legislators are today and where, generally speaking, they believe budgeting is headed. To understand the situation in which any politician finds himself or herself, the reader must have some idea of national and state budget trends and theories as seen through the eyes of the non-federal politician. The author uses the word “politician” here very purposefully. Most state legislators are just that: politicians. They are not statesmen. If they were statesmen, the inquiry would be more into “what is the right thing to do?” versus “what can I get passed for my district?” The non-federal politician must have an idea of general trends in federal revenues and spending, basic taxation theories, and trends in state revenues and spending and how those will affect the politician’s district and votes on spending for homeland security. This chapter will give the reader insights similar to those shared by many non-federal politicians.

#### **A. TRENDS IN FEDERAL BUDGETING**

The trend in federal budgeting is obvious to state and local units of government, especially those professionals overseeing homeland security in rural areas of the nation. That trend is away from funding non-federal governments, even for federally mandated programs. Two publications clarify those trends. In December 2007, the Congressional Budget Office (CBO) published its long-term budget outlook. In January 2008, CBO published the economic outlook for 2008 through 2018.

For consistency, since the United States Government Accountability Office (GAO) reports reviewed below and in Section C assume no change in current policy or law, CBO’s “extended-baseline scenario” would appear to be the more accurate scenario

to follow. That scenario assumes current law regarding most taxes, Medicare, Medicaid and Social Security will remain unchanged, and other spending (excluding interest) and revenues will remain constant as a share of GDP after 2017. The alternative would be to make assumptions about what policy changes may be instituted by federal policy-makers, a task even a clairvoyant would find daunting.

Figure 1 compares revenues to expenses from 1962 until 2082. Revenues equal expenses in approximately 2025 and do not keep pace thereafter. The primary driver for the deficit is health care.<sup>61</sup> Homeland security spending would be a part of the “other federal non-interest spending” in Figure 1.

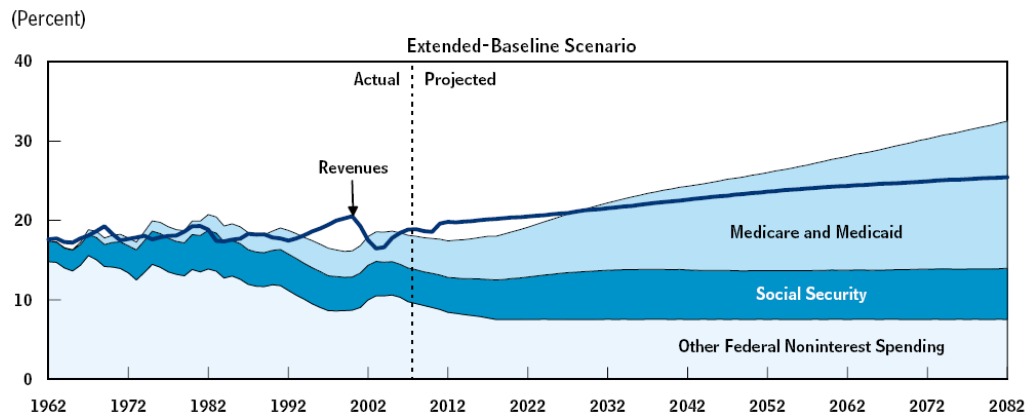


Figure 1. Revenues and Spending Excluding Interest, by Category, as a Percentage of Gross Domestic Products under CBO’s Long-Term Budget Scenarios<sup>62</sup>

As set forth in Figure 2, CBO projects mandatory spending to increase and discretionary spending to decrease over the next ten years, both as a percentage of Gross Domestic Product (GDP).

<sup>61</sup> Congress of the United States Congressional Budget Office, *The Long-Term Budget Outlook* (Washington: December 2007), Pub. No. 3030, 1.

<sup>62</sup> *Ibid.*, 3.

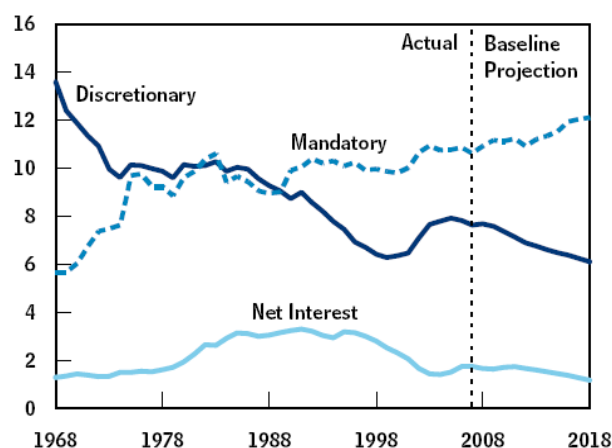


Figure 2. Major Components of Spending, 1968 to 2018.<sup>63</sup>

The effect on the federal budgeting process will be to lower the percent of discretionary funding from 7.6 percent of GDP in 2008 to 6.1 percent of GDP in 2018, the lowest in 40 years.<sup>64</sup> It should be noted that the actual dollar amount may increase, but the effective buying power will decrease, thereby placing a greater burden on non-federal units of government.

Federal budgeting may also be impacted by the aggregate fiscal situation of the federal and non-federal units of government. The GAO report states “these fiscal challenges cannot be remedied simply by shifting the burden from one sector to another.”<sup>65</sup> GAO projects federal, state and local surpluses and deficits as a share of GDP in the following figure. The significant downward trend dictates federal and non-federal policy makers develop a viable strategy to improve the fiscal integrity of the combined picture. The federal government ignoring the state and local governments’ situations and the non-federal governments ignoring the federal situation will result in a lack of fiscal integrity.

<sup>63</sup> Congress of the United States Congressional Budget Office, *The Budget and Economic Outlook: Fiscal Years 2008 to 2018* (Washington: January 2008), Pub. No. 3076, 55.

<sup>64</sup> Ibid., xii.

<sup>65</sup> United States Government Accountability Office, *The Nation’s Long-Term Fiscal Outlook, April 2008 Update* (Washington: April 2008), GAO-08-783R, 8.

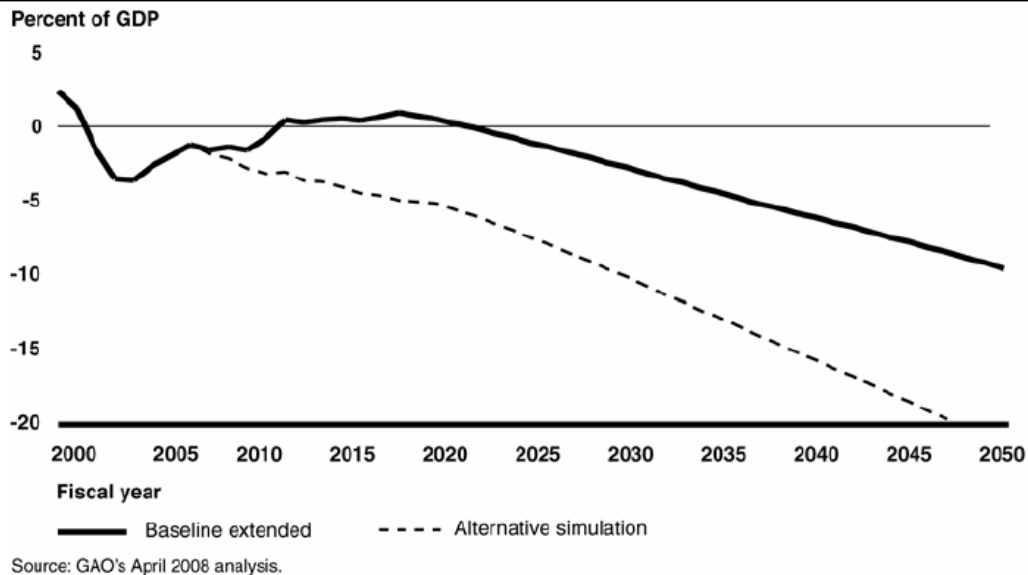
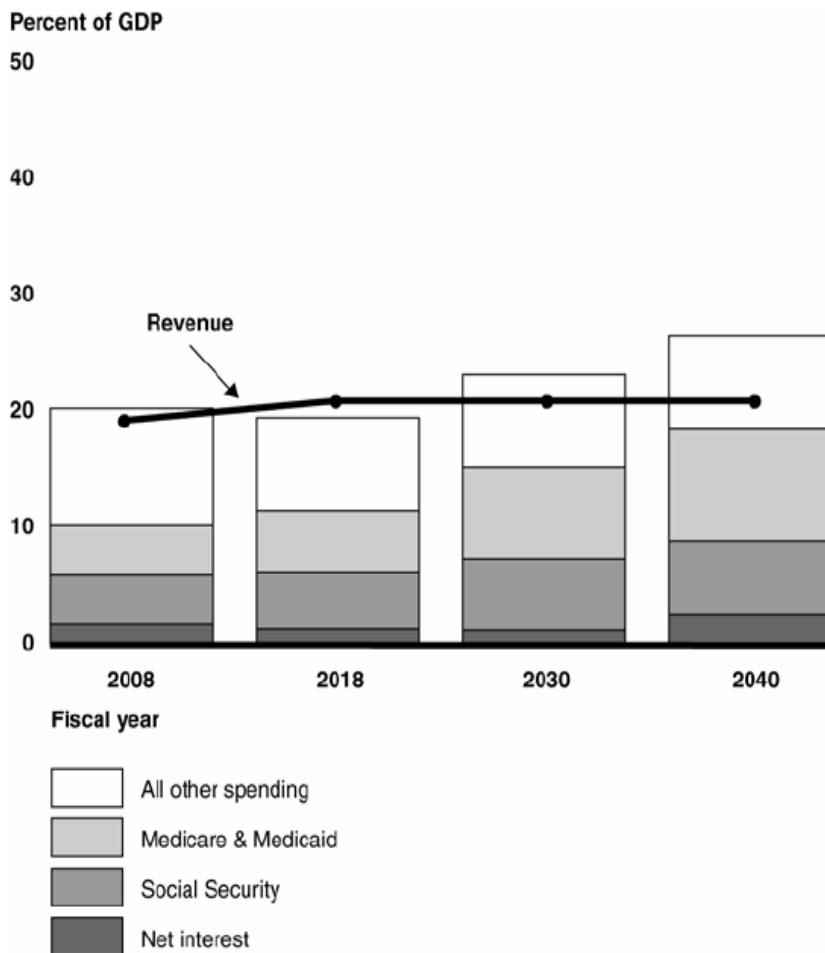


Figure 3. Unified Surpluses and Deficits as a Share of GDP under Alternative Fiscal Policy Simulations<sup>66</sup>

GAO concurs with CBO regarding the gap resulting primarily from federal entitlement programs, especially health care.<sup>67</sup> Figure 4 projects spending levels against revenue, showing Medicare and Medicaid spending escalating significantly, while “all other spending” diminishes as a percent of GDP between 2008 and 2040. “All other spending” includes homeland security appropriations.

<sup>66</sup> United States Government Accountability Office, *The Nation's Long-Term Fiscal Outlook, April 2008 Update*, 1.

<sup>67</sup> *Ibid.*, 2.



Source: GAO's April 2008 analysis.

Figure 4. Potential Fiscal Outcomes under Baseline Extended: Revenues and Composition of Spending as Shares of GDP<sup>68</sup>

Even a novice at budgeting can follow the projections in Figure 4 and realize the federal government will have fewer and fewer “discretionary” dollars to spend on programs such as homeland security. Unless some event dramatically changes federal priorities, spending on Medicare and Medicaid will continue to strip available funds from the “all other spending” category, including homeland security.

<sup>68</sup> United States Government Accountability Office, *The Nation's Long-Term Fiscal Outlook*, April 2008 Update, 4.



The dilemma for the non-federal legislator is, and will continue to be, how to deal with the decrease in funding available for homeland security initiatives. Options include, but are not limited to, finding the monies to fully fund current programs; prioritizing current programs and adjusting funding accordingly; or cutting programs.

The following section discusses taxing philosophy, which impacts how revenues are generated, and current budgetary issues at the state level.

## **B. THE THREE-LEGGED STOOL**

Many state legislatures, and therefore legislators, adhere to the “three-legged stool” principle of funding state budgets. As shown below, revenue is generated from three basic taxes: income, sales and property. The bipartisan United States Advisory Commission on Intergovernmental Relations (ACIR), created in 1959 and disbanded in 1996, studied the relationships among local, state and federal governments, particularly on fiscal issues.<sup>69</sup> ACIR urged non-federal units of government to rely on the “three-legged stool” to finance services.<sup>70</sup> John Shannon, former director of ACIR, said:

For the great majority, operating in a highly competitive environment, the best tax system is one that makes moderate use of each of the big three – property, income and general sales taxes.

...

We have learned, though, that it is very risky for a state to lean too heavily on any one of the big three. Why? Because each of these taxes has it [sic] own set of advantages and disadvantages. The more you push down on any one of them, the more obvious become its weaknesses and the less obvious its strengths.<sup>71</sup>

From a legislator’s perspective, this issue arises every budget cycle because of the potential for disparity among the “legs.” If one leg is “longer” than the others, the “stool” is out of balance and the longer “leg” bears a greater portion of the burden. The following graphic depicts a stool “in balance.”

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<sup>69</sup> Billy Hamilton, “A Lesson in Fiscal Federalism,” *State Legislatures* (July/August 2008), 48.

<sup>70</sup> *Ibid.*, 50.

<sup>71</sup> *Ibid.*



Figure 5. Three-legged Stool.

Unfortunately, many states that rely upon this approach are not able to keep the stool in balance. Two examples are Kansas and Minnesota. The following table shows the desired balances and the actual balances for both states based upon FY2007.

Table 4. Three-legged Stool Comparison (FY2007)<sup>72,73</sup>

<b>Tax</b>	<b>“Ideal”</b>	<b>MN Actual</b>	<b>KS Actual</b>
Income Tax	33.3%	38.7%	31.2%
Sales Tax	33.3%	27.8%	30.2%
Property Tax	33.3%	33.5%	38.6%
<b>Total</b>	100%	100%	100%

<sup>72</sup> Chris Courtwright, “Tax Overview in Kansas,” Unpublished memo to Senator Jay Emler, (Topeka, KS: Kansas Legislative Research Department), August 11, 2008.

<sup>73</sup> Dan Salomone, *Understanding Tax Policy* (St. Paul: MN Department of Revenue, slide presentation, July 2008), [http://www.taxes.state.mn.us/mntaxreform/presentations/DOR\\_TaxationPresentation\\_2008.ppt](http://www.taxes.state.mn.us/mntaxreform/presentations/DOR_TaxationPresentation_2008.ppt), (accessed August 8, 2008), slide 12.

The “three-legged stool” is not universally accepted, however. Dr. William Batt, a former university professor and policy analyst for the New York State Legislature, authored a treatise in 2005 that does not support use of the “three-legged stool.” Dr. Batt begins his discussion by describing three traditional arguments in support of the “three-legged stool” as:

1. that taxes should be drawn from as wide an array of sources as possible so as not to overburden any one base or sector.
2. that the spread of tax burdens over a number of bases will ensure greater stability and reliability.
3. that reliance upon a wider number of revenue streams minimizes the downside consequences which all taxes impose on the economy.<sup>74</sup>

Dr. Batt then discusses his opposition to each of the arguments and provides his solution: A tax only upon land.

Far from spreading the burden of distribution over a wide array of tax bases, the ideal tax, then, should be imposed solely on those factors of production that form an inelastic base, *i.e.*, that constitute forms of land - whether they be locational sites, natural resources, the spectrum, time slots, or others as they may arise in the future. Land, in any of its forms, is totally inelastic.<sup>75</sup>

...

The upshot is that a tax on land value alone -- totally neutral, efficient, certain, progressive, stable, and administrable -- measures up so well that it looks like the perfect tax!<sup>76</sup>

The reality of the political situation in almost any state, however, is no politician is willing to accept Dr. Batt’s premise. The political fallout from taxing strictly land would be loss of office at the next election. The author suspects even statesmen would be

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<sup>74</sup> William Batt, “The Fallacy of the ‘Three-Legged Stool’ Metaphor,” *State Tax Notes* 35 (February 2, 2005): 377.

<sup>75</sup> *Ibid.*, 378.

<sup>76</sup> *Ibid.*, 380.

hard pressed to vote for legislation that did not spread the tax burden over several areas. In any event, the majority of states still follow, to some extent, the philosophy of taxation using the “three-legged stool.”

Dr. John D. Wong, J.D., Kansas Public Finance Center, Hugo School of Urban and Public Affairs, Wichita State University, authored a study on Kansas taxes. The study defines taxes as progressive, proportional and regressive using the *Minnesota Tax Incidence Study* definitions:

- Progressive tax—A tax for which the effective tax rate rises as income rises.
- Proportional tax—A tax for which the effective tax rate does not change with income.
- Regressive tax—A tax for which the effective tax rate falls as income rises.<sup>77</sup>

The study finds Kansas individual income tax to be progressive; residential property tax significantly regressive,<sup>78</sup> and retail sales tax to be moderately regressive.<sup>79</sup> Offering no opinion as to the appropriateness of any tax, Chris Courtwright, Principal Economist, Kansas Legislative Research Department, provided the following analysis of the Kansas three-legged stool.

The reliance on the three-legged stool (property, income, and sales) to finance government in Kansas bases two of the legs of the stool on regressive tax sources. Only income tax is a progressive tax source.

...

Income taxes are the most volatile source out of the three main tax sources. Income tax receipts can drop the fastest of the three main sources. The drop may be so fast that governments do not have adequate time to plan for the reduction in revenue.<sup>80</sup>

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<sup>77</sup> John D. Wong, *Kansas Tax Incidence Study: Who Pays Kansas Individual Income, Residential Property, and Retail Sales Taxes* (Wichita, KS: Wichita State University, 2006), 13.

<sup>78</sup> Ibid., 78.

<sup>79</sup> Ibid., 79.

<sup>80</sup> Courtwright, 2-3.

While Courtwright's analysis of the Kansas "three-legged stool" is neutral, legislators should be aware of the potential for rapid change in the equality of the "legs" based upon the volatility of the income tax revenue. That volatility would be a reason to not use the "three-legged stool" approach to funding.

Even knowing the potential problems with the "three-legged stool" principle, politicians tend to follow it. According to *Governing.com*, an on-line publication of Congressional Quarterly, Inc.:

There is no such thing as a perfect structure, no template that all, or even most, of the states could use.<sup>81</sup>

As non-federal legislators search for revenue sources to replace federal funding for homeland security initiatives, they must be cognizant of the impact lengthening one of the three legs has on the other legs and the impact on the taxing structure as a whole. An argument can be made for each leg bearing the full burden.

- Property should carry the full burden because it will derive the greatest benefit.
- Sales should bear the full burden because everyone benefits from greater security and it is a fairer way to distribute the burden among the populace.
- Income should bear the full burden because enhanced security protects the businesses and, therefore, the jobs of those paying income tax.

Similar arguments can be made regarding almost every issue that needs funding. It is unlikely any politician, however, would be overly optimistic about constituent response if only one leg is lengthened. Either each leg would be lengthened or an alternative would have to be found. Some possible alternatives will be suggested in the chapters following.

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<sup>81</sup> Katherine Barrett, Richard Greene, Michele Mariani and Anya Sostek, "The Way We Tax: A 50-State Report," from *Governing's* February 2003 issue at *Governing.com* <http://www.governing.com/gpp/2003/gp3intro.htm> (accessed August 8, 2008), ¶5 (hereafter cited as "The Way We Tax").

## C. TRENDS IN STATE BUDGETING

In January 2008, GAO released its report entitled *State and Local Governments: Growing Fiscal Challenges Will Emerge during the Next 10 Years (Growing Fiscal Challenges)*. The report stressed the importance for federal policymakers to understand the fiscal pressures state and local units of government potentially face.<sup>82</sup> The report modeled potential fiscal situations for state and local units of government from 1980 through 2050. GAO concluded that, absent any policy changes, state and local units of government would face an increasing gap between receipts and expenditures, primarily as a result of the growth in health-related expenditures.<sup>83</sup> The following figure shows the effect of unchanged policy on operating balances and net lending and borrowing. Operating balances are defined as the ability to pay current expenditures from current receipts. Net lending and borrowing are defined as the balance of all receipts and expenditures during a specific time period. A declining line indicates the need to borrow funds or draw down existing assets to pay expenses.<sup>84</sup>

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<sup>82</sup> United States Government Accountability Office, *State and Local Governments: Growing Fiscal Challenges Will Emerge during the Next 10 Years* (Washington: January 2008), GAO-08-317, 3 (hereafter cited as *Growing Fiscal Challenges*).

<sup>83</sup> United States Government Accountability Office, *State and Local Governments: Growing Fiscal Challenges Will Emerge during the Next 10 Years*, 5.

<sup>84</sup> *Ibid.*, 9.

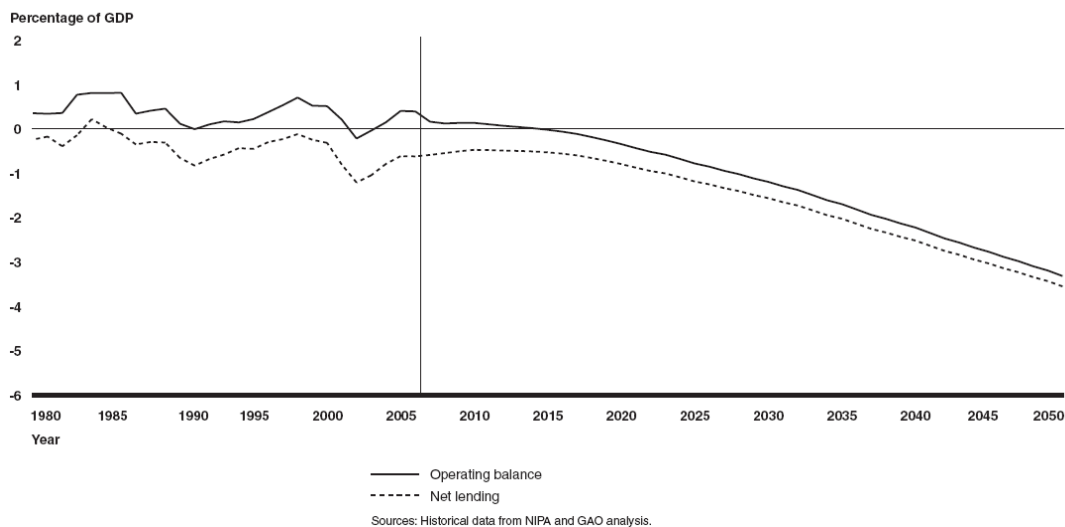


Figure 6. Balance Measures for State and Local Model as a Percentage of GDP<sup>85</sup>

As can be readily seen from Figure 6, according to GAO's model, by 2015 state and local governments are either going to have to borrow greater amounts of money, increase taxes or change existing policies regarding levels of funding for existing programs. According to the GAO report:

For the state and local sector, we calculated that to close the fiscal gap would require action today equal to a 15.2 percent tax increase or a 12.9 percent reduction in spending financed by non-grant revenues.<sup>86</sup>

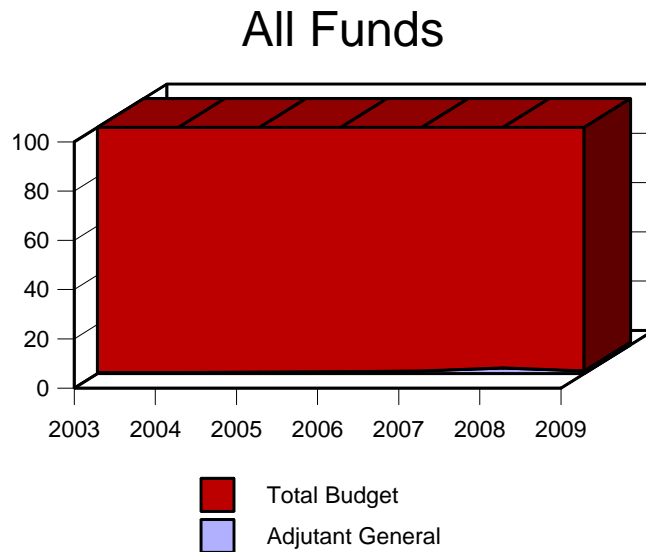
Neither of the aforementioned alternatives bode well for funding homeland security initiatives by non-federal governmental units.

Using Kansas as an example, the ramifications of cutting spending by 12.9 percent would be disastrous for discretionary spending such as homeland security. Approximately 80 percent of the state general fund (SGF) is non-discretionary spending, primarily due to education and social programs, e.g., Medicaid. Consequently, the 12.9 percent reduction would have to be taken from the remaining 20 percent. The actual

<sup>85</sup> United States Government Accountability Office, *State and Local Governments: Growing Fiscal Challenges Will Emerge during the Next 10 Years*, 10.

<sup>86</sup> *Ibid.*, 11.

reduction in discretionary spending would be approximately 65 percent. Graph 1 shows the total all funds budget for FY2003 through FY2009 for Kansas and for the Adjutant General's Department, which includes homeland security.



Graph 1. Total all funds budget for FY2003 through FY2009 for Kansas and for the Adjutant General's Department

The SGF portion of the foregoing graph is set forth in Table 4 and shows the low priority given to the entire department, let alone the even smaller portion dedicated to homeland security. To make the contrast even sharper, the marked increase in funding between FY2005 and FY2006 and again between FY2007 and FY2008 was strictly a result of the state match required to receive federal disaster payments for the catastrophic ice storms, floods and tornados experienced during those years. Had it not been for the required matching funds and the federal disaster monies, it is doubtful the department's funding would even be noticeable on the graph.

The following two tables show the actual percentage for the Adjutant General's Department, including homeland security, of the SGF and all funds budgets. The average total percentage of the SGF budget for the department is approximately 0.2 percent. (See



Table 4) For FY2003 through FY2007, none of the SGF monies was for homeland security. In FY2008, only 2.4 percent of the 0.2 percent is actually homeland security funding.<sup>87</sup>

Table 5. State General Fund - Percent of Total Budget Adjutant General's Department FY2003 through FY2009 (\$000)

	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008 Approved</b>	<b>2009 Approved</b>
Adjutant General	\$8,9212	\$5,515	\$4,907	\$11,194	\$11,072	\$20,695	\$21,086
Total Budget	\$4,137,500	\$4,316,500	\$4,690,100	\$5,139,400	\$5,607,710	\$6,138,189	\$6,405,078
% of Total Budget	0.2%	0.1%	0.1%	0.2%	0.2%	0.3%	0.3%

The average total percentage of the all funds budget for the department is approximately 0.94 percent. (See Table 6)

Table 6. All Funds - Percent of Total Budget Adjutant General's Department FY2003 through FY2009 (\$000)

	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008 Approved</b>	<b>2009 Approved</b>
Adjutant General	\$41,871	\$40,073	\$69,437	\$84,376	\$129,507	\$307,564	\$145,589
Total Budget	\$10,082,000	\$10,197,300	\$10,585,500	\$11,432,700	\$11,968,537	\$13,159,674	\$13,493,773
% of Total Budget	0.4%	0.4%	0.7%	0.7%	1.1%	2.3%	1.1%

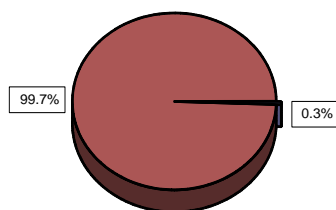
The FY2009 approved SGF and all funds budgets increased over FY2003 54.8 and 247.7 percent, respectively. Notwithstanding such significant increases, due primarily to federal disaster funds and required matching state funds, the percent of the total departmental budget is minuscule.

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<sup>87</sup> Bill Chornyak, Unpublished memorandum to Senator Jay Scott Emler (Topeka, KS: Kansas Department of Emergency Management, September 5, 2008).

## Approved 2009

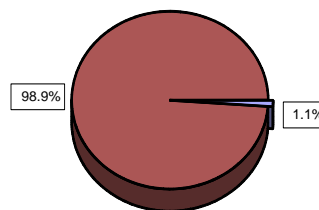
State General Fund



Adjutant General  
Total Budget

## Approved 2009

All Funds



Adjutant General  
Total Budget

Graph 2. Adjutant General's Department

The other option proffered by GAO is a 15.2 percent tax increase. While it is doubtful party affiliation would be a major consideration in such a monumental tax increase, a state such as Kansas, controlled by a Republican legislature<sup>88</sup>, is extremely unlikely to pass such a significant tax increase. One of the planks in the Republican platform is to lower taxes. A second plank is smaller government. Absent another catastrophic event such as September 11<sup>th</sup>, either plank would undoubtedly defeat an attempt to increase taxes by a significant amount. Together, the planks mean the proposal would be unlikely to even make it out of committee.

Figure 7 projects the budgeting difficulty all levels of government will face in the coming years. It plots the projected health care versus non-health care spending between 2000 and 2050 as a percentage of GDP, absent any change in current policies.

<sup>88</sup> During the most recent terms of senators, 2005-2008, 30 of the 40 members of that chamber were Republican. During the most recent term of House members, 2007-2008, 77 of the 125 representatives were Republican. The required majority to pass any legislation is a minimum of 21 senators and 63 representatives. The *Kansas Constitution*, art. 2, sec. 2, establishes the maximum number of senators and representatives.

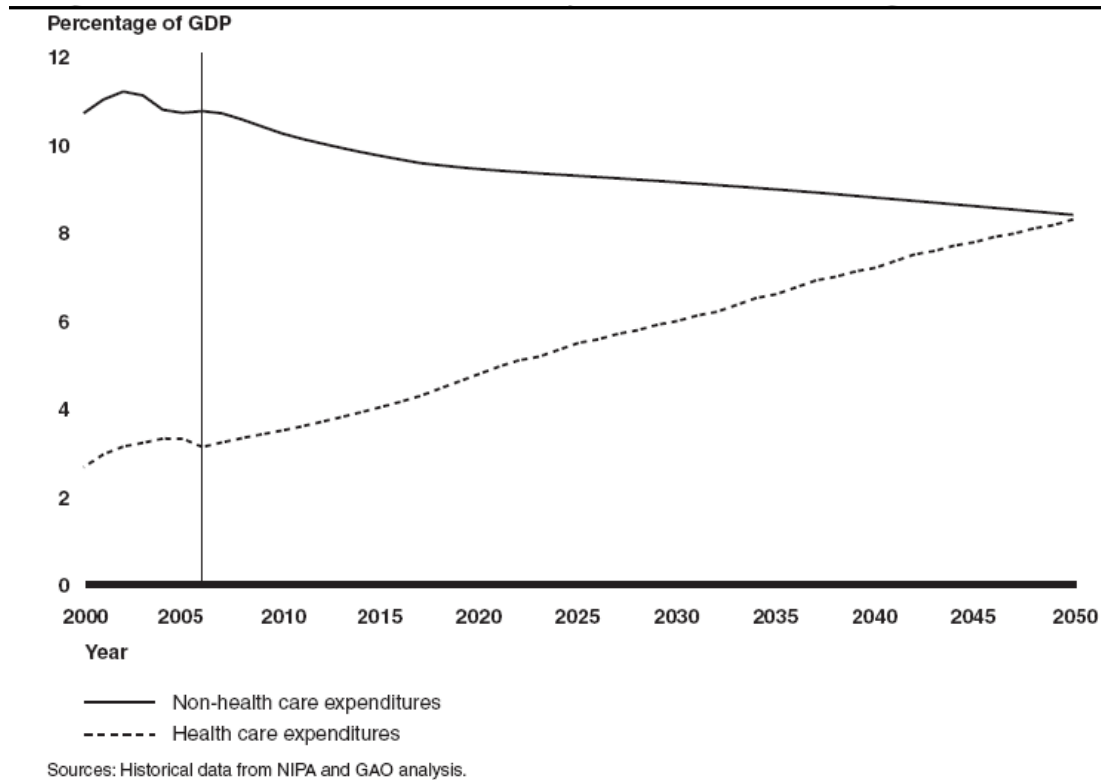


Figure 7. State and Local Government Expenditures, as a Percentage of GDP<sup>89</sup>

Such a trend line clearly precludes expenditures for additional programs, whether homeland security or otherwise. If current policy and law remains unchanged, the trend line indicates health care expenditures will exceed non-health care expenditures, leaving little or nothing available for existing homeland security expenditures.

The timeframe may not be as distant as projected by the GAO report. According to *StateNet Capitol Journal*, an on-line publication, 31 states project budget shortfalls for FY2009. Seventeen of those states project in excess of 5 percent SGF shortfall and six of the 17 states are projecting an SGF budget shortfall in excess of 10 percent.<sup>90</sup> The following chart shows the states and their respective shortfall, or gap, percentages.

<sup>89</sup> United States Government Accountability Office, *State and Local Governments: Growing Fiscal Challenges Will Emerge during the Next 10 Years*, 13.

<sup>90</sup> Rich Ehisen, ed., *StateNet Capitol Journal* XVI, no. 24, (August 11, 2008): 2.

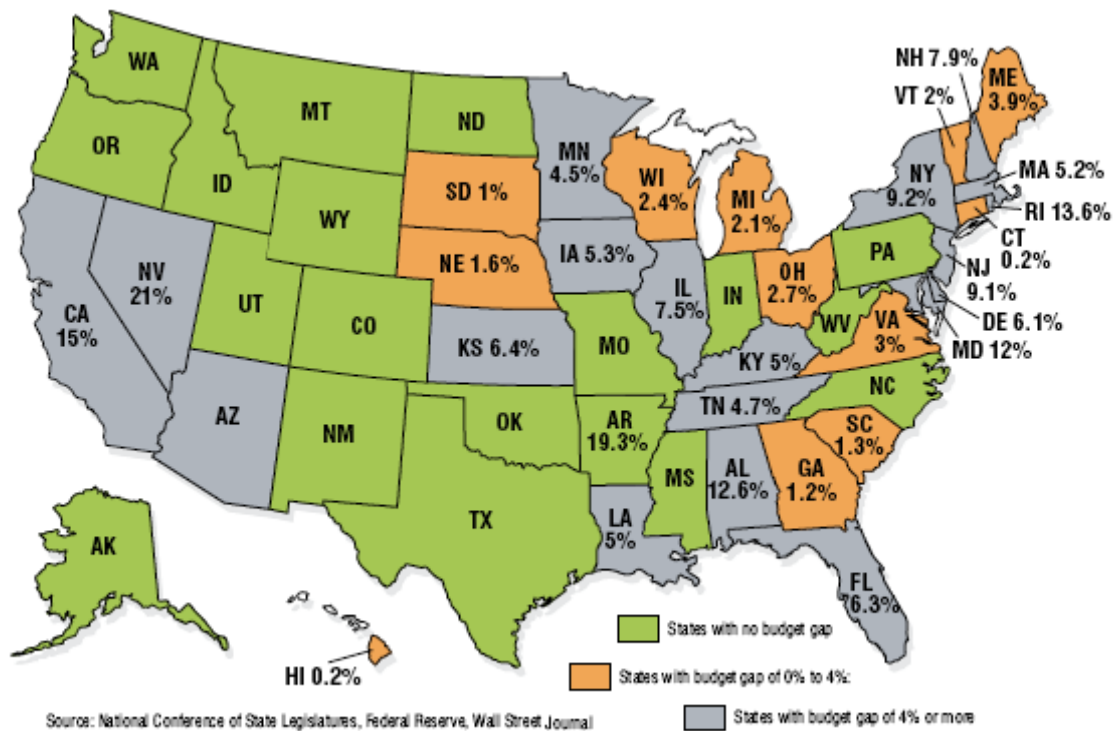


Figure 8. Widening Budget Gaps (FY2009)<sup>91</sup>

If the GAO report or, even worse, the *StateNet Capitol Journal* prediction is correct, funding homeland security initiatives from SGF will be an impossibility. Unlike the federal government, most states require the SGF budget to be balanced,<sup>92</sup> e.g., Kansas Statutes Annotated 75-6702(b) requiring a 7.5 percent positive SGF ending balance. Such a requirement prohibits state appropriators from deficit spending on any issue, including homeland security. Homeland security professionals will have to work with state appropriators to develop innovative solutions for providing homeland security. Possible solutions, some currently in practice, will be reviewed in a succeeding chapter.

Labeling each leg of the “three-legged stool” helps lawmakers determine the source and amount of income a state has to distribute through its SGF budgeting. According to *Governing.com*:

<sup>91</sup> Rich Ehsen, ed., *StateNet Capitol Journal* XVI, no. 24, (August 11, 2008): 2.

<sup>92</sup> *Growing Fiscal Challenges*, 7.

The vast majority of state tax systems are inadequate for the task of funding a 21st-century government.

Most of those tax systems are also unfair. They break the golden rule of tax equity: collect the lowest possible rates on the widest possible base of taxpayers.<sup>93</sup>

The article goes on to state:

[I]t's the nature of the implausible and inscrutable world of state taxation, a world in which hyperbole is the native language and nitty-gritty politics trumps common sense.<sup>94</sup>

...

But politicians who want to stay in office regularly disregard their better instincts and follow their citizens on a path to misbegotten policies.<sup>95</sup>

While the foregoing statement may seem extremely pessimistic, it fairly accurately sets forth the dilemma of whether the legislator will be a politician or a statesman. Reducing spending by 12.9 percent is highly improbable. It is likewise improbable legislators would increase taxes by 15.2 percent. The most viable options are for the homeland security professionals and legislators to determine priorities and develop innovative funding mechanisms. If they cannot work together to accomplish both, the most likely alternative is for programs to simply cease to exist, regardless of importance.

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<sup>93</sup> "The Way We Tax," 1.

<sup>94</sup> Ibid, 2.

<sup>95</sup> Ibid.

## IV. INSIDE THE BOX OPTIONS

The current homeland security budget paradigm for states and local units of government is to depend upon the federal government grant programs. As set forth previously, for the past several years overall grant funding has rapidly declined. In his book *Strategic Planning for Public and Nonprofit Organizations (Strategic Planning)*, John Bryson suggests “[t]he support and the commitment of key decision makers are vital if strategic planning in an organization is to succeed.”<sup>96</sup> Whether following *Strategic Planning’s* philosophy or the philosophy in Ori Brafman’s *The Starfish and the Spider (Spider)*, homeland security professionals need to elicit the support of “key decision makers.” The difference between *Strategic Planning* and *Starfish* is the extent to which key decision makers are in “upper management.” For example, in *Strategic Planning’s* Step 4 “[m]embers of an organization’s governing body ... are often better than the organization’s employees at identifying and assessing external opportunities and challenges.”<sup>97</sup> *Starfish*, on the other hand, promotes the idea that “knowledge is spread throughout the organization.”<sup>98</sup>

*Strategic Planning* made an interesting observation that accurately describes the public’s position regarding funding homeland security:

Employees of governmental agencies and nonprofit organizations receiving governmental funds might see the public’s desire to limit or decrease taxation and funding as selfishness. It may be that for some people; however, one might also interpret these limitations on public expenditure as a sign of unwillingness to support organizations that cannot demonstrate unequivocally effective performance.<sup>99</sup>

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<sup>96</sup> John M. Bryson, *Strategic Planning for Public and Nonprofit Organizations*, Third Edition (Jossey-Brass; San Francisco, CA, 2004), 34.

<sup>97</sup> *Ibid.*, 39.

<sup>98</sup> Ori Brafman and Rod A. Beckstrom, *The Starfish and the Spider* (Penguin Group; London, England, 2006), 204.

<sup>99</sup> Bryson, *Strategic Planning for Public and Nonprofit Organizations*, 41.

As homeland security professionals, we understand the need for the programs we support, e.g., training, preparation or prevention. The author's experience as an elected public servant, however, leads him to a different conclusion. The general public believes such measures to be "boondoggles" designed to keep homeland security professionals employed.

Another example of the "boondoggles" belief comes from one of the members of the Joint Committee on Kansas Security. As mentioned in Chapter II, Section C, State Responses, in 2007 Kansas provided funding for an all hazards training center called Crisis City. The committee member has said on several occasions he does not believe there is any need to fund homeland security initiatives as there is no "real" threat to Kansas. He believes the monies could be more advantageously spent by returning them to the voters and not funding future projects.

Frequently, legislators develop a belief they know what is best for their constituents in all areas of governing. While a legislator may have a particular area of expertise, in the author's experience, few legislators have anything close to universal knowledge in all subject areas. Homeland security is no different. If legislators want to develop the best possible homeland security initiative in their jurisdiction, they should cultivate a *Starfish* approach. Rather than relying on themselves as the foundation of knowledge, legislators should draw as many homeland security professionals as possible from all levels of service into the discussion of homeland security priorities and possible methods of funding those priorities.

The mission and mandate for state and local units of government are quite clear: protect the public from terrorism and catastrophic events. Simply dumping more money into homeland security initiatives at the state and local level will not be tolerated by taxpayers. In this past legislative session in Kansas, a section of one of the budget bills stated general fund money would be used to offset the loss of federal funding of regional emergency management coordinator positions. The proviso went on to state, however, it was not the policy of the Kansas Legislature to fund all federal grant program shortfalls

in the future.<sup>100</sup> The specific reason for the wording was precisely that stated above; legislators and taxpayers would not tolerate dumping state money into federal programs from which the federal government has removed funding.

The traditional approach by state and local units of government has been the “structuralist” view of planning. Typically, what is going on “in the market,” is observed, which in this case, would be federal funding of homeland security initiatives; see what the changes are in the area, and try to divide the market, e.g. grant funding.<sup>101</sup> The “reconstructionist” approach analyzes the existing data with a focus on value innovation.<sup>102</sup> The homeland security professional’s strategy must combine both. It should evaluate the existing market, or “inside the box,” and find options for revenue that are, as yet, untapped. This chapter will address a more traditional approach, similar to that of *Strategic Planning*. Searching “outside the box” for the value innovation, which may be more of a *Starfish* approach, will be discussed in Chapter V.

#### **A. ASSET FORFEITURE**

One possible “inside the box” strategy would be state prosecution for terrorism. Prosecution of terrorism has basically been left to the federal government, which amended the federal definition of terrorism after the attacks of September 11, 2001.<sup>103</sup> The Council of State Governments and the National Conference of State Legislatures have both conducted surveys of the number of statutes dealing with terrorism and homeland security. There are literally hundreds of such statutes,<sup>104</sup> but there is a lack of uniformity among all states. In fact, several states do not specifically have terrorism statutes, but may have statutes adaptable to prosecuting terrorism. For purposes of this thesis, only existing terrorism statutes will be compared.

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<sup>100</sup> 2008 SB 534, Section 119.

<sup>101</sup> W. Chan Kim and Renée Mauborgne, *Blue Ocean Strategy* (Harvard Business School Press; Boston, MA, 2005), 209, 211.

<sup>102</sup> *Ibid.*

<sup>103</sup> 18 USC §2331.

<sup>104</sup> Doug Farquhar, National Conference of State Legislatures; Memo to Senator Jay Scott Emler, May 14, 2008.



18 USC §2331 defines domestic terrorism as activities that:

(A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;

(B) appear to be intended-

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and

(C) occur primarily within the territorial jurisdiction of the United States.

The statutes of three states have mirrored the federal definition: Florida, Georgia and South Dakota. Eight states have similar language, but with minor changes: Alabama, Kansas, Louisiana, Michigan, New Jersey, New York, Ohio and Pennsylvania. Arkansas, California, Indiana, Illinois, Iowa, Nevada and Tennessee each have a specific terrorism statute. Unfortunately, those states do not clearly define the term “terrorism.” Tennessee’s statute actually states, almost in whole, it is an offense “to commit an act of terrorism.”<sup>105</sup> This ambiguity can result in states not utilizing to the greatest extent possible the tools available to them. A clear definition of terrorism can open opportunities to use other state statutes that can produce revenue for funding homeland security initiatives, as well as funding the prosecution of the criminals.

A terrorism statute does not stand alone in the prosecution of a defendant for the crime of terrorism. Additionally, the terrorism statute, in and of itself, has no mechanism to provide any sort of funding. A thorough review of a state’s existing statutes should be performed and the state criminal code updated to include as many of the aspects of the

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<sup>105</sup> Tennessee Code Annotated 39-13-805.

crime of terrorism as possible. The inclusion of as many elements as possible in the various statutes will eventually lead to the ability to seize the defendant's assets and, ultimately, to forfeit those assets to the state.

For purposes of this thesis, Kansas Statutes Annotated will be used as an example of what state legislatures might do to revise terrorism statutes. The 2005 Senate Bill 25 (SB 25) was recommended for introduction during the 2004 interim by the Joint Committee on Kansas Security. Prior to that time, Kansas had no statute regarding terrorism. Any prosecution for a terrorist act would have been pursuant to other criminal statutes, e.g., murder, criminal damage to property, or theft. Testimony before the committee made it clear such prosecutions would have resulted in a defendant's verdict because the elements of terrorism may not fit neatly into other statutes. As a result, SB 25 was signed into law and became effective July 1, 2006.<sup>106</sup>

Kansas did not mirror 18 USC § 2331 in that the Kansas definition of terrorism applies only to felonies, while under the federal statute, the act must only violate "the criminal laws of the United States or of any State." For federal purposes, a misdemeanor might qualify. Further, Kansas did not state the act must be dangerous to human life. The benefit of the Kansas definition over the federal definition is that as long as the act constitutes a felony, more acts can be considered to be terroristic in nature, regardless of whether the act is "dangerous to human life."

SB 25 established terrorism as an exception to the criminal statute of limitations. The benefit to the public of such an exception is the terrorist act may not be discovered until after the "normal" statute of limitations had expired, e.g., three to five years. The only other exception to the criminal statute of limitations in Kansas law had been murder. With this exception in place, prosecutors can avail the state of other statutory provisions that may ultimately provide revenue to the state.

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<sup>106</sup> K.S.A. 21-3449.

SB 25 also established a new crime titled “Illegal use of weapons of mass destruction.”<sup>107</sup> Had such a statute been in place in 1995, the perpetrators of the Oklahoma City bombing could have been prosecuted under Kansas law. Timothy McVey’s sentence could have been the same, i.e., death, since Kansas permits the death penalty in cases of murder. Further, SB 25 established the crime of “Furtherance of terrorism or illegal use of weapons of mass destruction.”<sup>108</sup> McVey and his co-conspirators, in addition to being charged with a violation of weapons of mass destruction, could have been charged with the crime of furtherance of terrorism. The significance of the latter charge comes in another provision of SB 25.

SB 25 amended the asset seizure and forfeiture statute to cover the foregoing crimes, and some others, as well as the attempt, conspiracy or solicitation to commit any of the foregoing crimes. Asset forfeiture applies whether or not there is a prosecution or conviction related to the act.<sup>109</sup> K.S.A. 60-4112, paragraph (o) states:<sup>110</sup>

An acquittal or dismissal in a criminal proceeding shall not preclude civil proceedings under this act, nor give rise to any presumption adverse or contrary to any fact alleged by the seizing agency.

Therein lies a very significant tool for units of state government. Asset forfeiture, which does not require criminal conviction, not only curtails the ability of the terrorist to act by confiscating the terrorist’s financial and physical assets, but also provides a source of revenue to state government that can be used to replace federal funds. The source would not be appropriate to depend upon for sustainability purposes, but it would be one for funding enhancement.

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<sup>107</sup> Kansas Statutes Annotated 21-3450.

<sup>108</sup> Kansas Statutes Annotated 21-3451.

<sup>109</sup> Kansas Statutes Annotated 60-4104.

<sup>110</sup> Kansas Statutes Annotated 60-4112 (o).

A review of seizure and forfeiture statutes reveals that several states apply such statutes only to specific crimes, e.g., money laundering, illegal sale of controlled substances, street gangs, firearms and dangerous weapons, and criminal profiteering.<sup>111</sup> Revision of such statutes could increase the applicability of seizure and forfeiture to any crime related to terrorism, thereby, increasing the potential revenue available for funding homeland security initiatives.

At the federal level, asset forfeitures from all types of crimes increased in FY2006 to \$2,053.4 million, from \$1,370.4 million in FY2005, an increase of 49.8 percent. If assets seized but not yet forfeited, and therefore, not yet owned by the government were not considered, the adjusted assets increased to \$1,256.2 million in FY2006 from \$659.2 million in FY2005, an increase of 90.6 percent.<sup>112</sup> It is doubtful that the federal experience will be repeated at the state level since states do not have the same volume of forfeitures. That does not mean, however, that states will not receive some benefit from utilizing forfeiture funds. The state of Kansas, for example, received \$2,561,000 in asset forfeitures under state law during 2007. It also received \$3,385,362 from the United States Department of Justice, the state's share from joint operations.<sup>113</sup> The combined total of almost \$6 million would assist the state in funding homeland security programs abandoned by the federal government.

The most significant drawback to using asset forfeiture might be the actual cost of forfeiture litigation. As mentioned above, a criminal conviction is not necessary for asset forfeiture to apply. Without the criminal conviction as evidence, however, asset forfeiture would require litigation that may prove too costly to pursue. Being able to introduce a criminal conviction in the forfeiture action makes the burden of proof fairly easily attainable. Without the conviction, extensive litigation very similar to the criminal trial would be required. The only real difference would be the level of proof required. In the

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<sup>111</sup> Jeffrey Armour, National Conference of State Legislatures; Memo to Senator Jay Scott Emler, May 16, 2008.

<sup>112</sup> *Asset Forfeiture Fund and Seized Asset Deposit Fund Annual Financial Statement Fiscal Year 2006*; U.S. Department of Justice Office of the Inspector General Audit Division; Audit Report 07-15, January 2007, 6.

<sup>113</sup> *United States Department of Justice 2007 Asset Forfeiture Fund Report*, <http://www.usdoj.gov/jmd/afp/02fundreport/2007affr/index.html> (accessed May 16, 2008).

criminal action, the burden would be beyond a reasonable doubt. In the civil forfeiture action, the same elements would only need to be proven by a preponderance of the evidence. The burden would be lower, but, because of how extensive the trial would be, the action may actually be cost prohibited.

## **B. TAXES, FEES AND BUDGETS**

State legislatures and local units of government are empowered to fund operations with the oldest of measures, i.e., taxation. For purposes of this thesis, there is no differentiation between taxes and fees. Both are included in the term “taxes” for purposes of this section. While a fee may be applicable only to a certain issue, e.g., obtaining a permit to sell liquor, it ultimately is paid into the public coffers over which the governing body has control.

The number and applicability of taxes is limited only by the imagination of the legislative body, whether state legislature, county commission or city council. In order to impose any tax, of course, there must be statutory authority. Therein may lie the only difference between a tax and a fee. A fee may not require statutory authority, but may be authorized by the creativity of the non-state level governing body. The following discussion is by way of example only.

### **1. Sales Tax**

In Kansas, as an example, sales tax increases must be imposed either by the legislature or by a city or county pursuant to statutory authorization and procedures.<sup>114</sup> Provided other statutory requirements have been met, the issue of increasing the sales tax is presented to the public at a duly called election. The most recent example of this occurred on August 5, 2008.

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<sup>114</sup> Kansas Statutes Annotated 12-187 et seq.

The issue presented to the Johnson County, Kansas, voters was approval of a quarter-cent public safety sales tax increase. The proposed use was to construct more jails and a crime lab. The measure passed with 53 percent of the vote.<sup>115</sup> It was not, however, uncontentious. Supporters of the measure claimed it was the “fairest way to pay for critical public safety services.”<sup>116</sup> Opponents disagreed saying, “another way should be found.”<sup>117</sup>

The experience in Johnson County, Kansas is typical. No one wants to pay higher taxes. The issue boils down to “Is it necessary?” In the foregoing case, a majority of the electorate determined the increase was in their best interest. That is not always the result, however.

Two communities in the same county defeated similar measures recently. In 2006, the city of Fairway defeated a sales tax proposal for a public safety center by a vote of 48 percent in favor and 52 percent opposed. In 2000, the city of Merriam defeated a sales tax proposal for a public safety center by a vote of 48.2 percent in favor and 51.8 percent opposed. Those narrow margins indicate to a legislator the tenuous support tax measures receive from constituents, even when the project is one for constituent safety.

## **2. Congestion Fee**

The purpose of a congestion fee is to reduce the amount of vehicle congestion on city streets. The fee can be based upon the time of day, location within the city or whatever criteria the governing body may approve. In addition to reducing traffic congestion, the fee has been proposed as a means to reduce pollution. The homeland security professional might suggest a congestion fee to assist with sustainability funding for homeland security initiatives related to more populated areas of the country, as well as critical infrastructure protection. The nexus would be less traffic would yield a lower threat potential.

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<sup>115</sup> “Johnson County Sales Tax Passes for Public Safety,” *The Kansas City Star*, August 5, 2008, <http://www.kansascity.com/115/v-print/story/735949.html> (accessed August 6, 2008).

<sup>116</sup> “Johnson County Sales Tax Passes for Public Safety,” *The Kansas City Star*.

<sup>117</sup> Ibid.

A congestion fee was first used in Singapore. It is currently used in Stockholm and London, as well as in Singapore.<sup>118</sup> Proponents of the fee claim there is ample evidence to show reductions in congestion; increases in the use of alternative forms of transportation, e.g., subways and bicycles, and revenue generation.<sup>119</sup>

In July 2008, David B. Horner, Deputy Secretary for Transportation Policy, U.S. Department of Transportation, briefed legislators at the Council of State Governments Midwestern Legislative Conference on the benefits of a congestion fee. As with other proponents, his focus was on curtailing traffic and, thereby, emissions. The homeland security professional should focus on the revenue generation as a means to achieve funding sustainability for homeland security initiatives and public safety by lowering the threat potential through reduced traffic congestion. During his presentation, Horner provided three domestic examples of congestion fees: Minneapolis; California State Road 91 between Anaheim and Riverside; and Interstate 15 near San Diego. According to Horner, public opinion supports congestion fees, citing surveys in 2006 and 2007.<sup>120</sup>

Recent action in New York and Hawaii, however, do not support Horner's assertions. In April 2008, the New York Assembly failed to endorse legislation that would permit a congestion fee in New York City. The fee proposed by New York's mayor was \$8 per car and \$21 per truck. It was projected to generate approximately \$500 million per year.<sup>121</sup> Opponents considered the fee a "regressive measure" and "tax on their ability to move around their own city."<sup>122</sup> The mayor of Honolulu expressed similar concern regarding a proposed congestion fee for Honolulu, stating, "I find it also amazing

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<sup>118</sup> Ken Belson, "Importing a Decongestant for Midtown Streets," *The New York Times*, March 16, 2008, <http://www.nytimes.com/2008/03/16/automobiles/16CONGEST.html?pagewanted=all> (accessed August 16, 2008).

<sup>119</sup> Belson, "Importing a Decongestant for Midtown Streets."

<sup>120</sup> David B. Horner, "Pricing and Public-Private Partnerships: A Response to U.S. Surface Transportation Policy Challenges," July 2008, <http://www.csgmidwest.org/About/MLC/AnnualMeeting/2008Presentations/Horner.pdf> (accessed August 13, 2008).

<sup>121</sup> Ibid.

<sup>122</sup> Nicholas Confessore, "\$8 Traffic Fee for Manhattan Gets Nowhere," *The New York Times*, April 8, 2008.

for someone who's against rail because of the tax increase now wants to impose a tax on people using their cars.”<sup>123</sup> Absent another significant event similar to 9/11, it is doubtful legislators will be overly anxious to increase taxes, even for public safety.

### **3. Budgets**

Currently, 27 states prepare annual budgets. Each of the remaining 23 states operates with a biennial budget.<sup>124</sup> All 50 states require balanced budgets.<sup>125</sup> Perhaps more accurately, no state permits deficit spending. Therefore, any balance at the end of a fiscal year must be positive.<sup>126</sup> Dr. Yilin Hou, an associate professor at the University of Georgia’s School of Public and International Affairs, has suggested multi-year budgets better equip a state or local unit of government to maintain fiscal stability.<sup>127</sup> Fiscal stability is needed in homeland security if programs are going to continue without federal funding.

According to Dr. Hou, there are three primary benefits to multi-year budgets. To begin with, the government must prioritize its goals. Secondly, policies must fit the multi-year strategy. Finally, longer term planning mitigates the effects of cyclical deficits.<sup>128</sup> With diminished federal funding for homeland security, states must determine which homeland security programs and objectives are most important. Such a determination can be achieved only if states prioritize homeland security initiatives prior to completing the budgeting process. An annual strategy providing for homeland security will not accomplish sustainability funding because the political pressure mitigates more toward social programs than homeland security initiatives. Prioritization of program funding will be revisited annually based upon existing economic and political pressures. In order for

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<sup>123</sup> Laurie Au, “Mayor Vows to Veto Congestion-fee Idea,” *Star Bulletin*, July 3, 2008, <http://starbulletin.com/2008/07/02/news/story12.html> (accessed August 13, 2008).

<sup>124</sup> *Budget Processes in the State* (National Association of State Budget Officers, September 1997).

<sup>125</sup> Yilin Hou, “Budgeting for Fiscal Stability over the Business Cycle: A Countercyclical Fiscal Policy and the Multiyear Perspective on Budgeting,” *Public Administration Review*, September/October 2006, 731.

<sup>126</sup> *Ibid.*

<sup>127</sup> *Ibid.*, 730.

<sup>128</sup> *Ibid.*, 734.



the multi-year budgeting approach to work, however, a budget stabilization fund (BSF) must be authorized.<sup>129</sup> The purpose of the BSF is to hold surplus funds from positive revenue years for expenditure during deficit revenue years.

According to the NCSL report “State Budget Stabilization Funds,” every state except Arkansas, Kansas and Montana, has some form of a BSF. The BSFs differ in design and controlling requirements, but the ultimate purpose is the same: surplus funds from one year are available for use in deficit years.<sup>130</sup> The NCSL report also indicates some states have expanded permitted withdrawals to include catastrophic events.<sup>131</sup> Although NCSL believes public support is strongly in favor of BSFs, that is not the personal experience of this author. Whenever surplus funds are anticipated, this author has experienced heavy political pressure to lower taxes and/or return the surplus to taxpayers.

Dr. Hou characterized the pressures of annual budgeting as follows:

Maintaining structural balance with a general fund surplus on an annual basis is easier said than done, for both political and economic reasons. The political reason is related to the budgetary process, which is “intrinsically and irreducibly political” (Rubin 2000; Wildavsky 1964). ... [T]axpayers in general have a tendency to demand more public services than their tax payments can support. When their current demands are adequately satisfied but the government still possesses extra resources, requests for tax refunds often dominate ... Elected officials and legislators, following the preferences of voters, also prefer current spending curbs or tax refunds **to win elections**. Therefore, surpluses ... are not easy to accumulate or sustain.<sup>132</sup> (Emphasis added)

Dr. Hou points out the very reason this thesis separates the terms “politician” and “statesman.”

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<sup>129</sup> Hou, “Budgeting for Fiscal Stability over the Business Cycle: A Countercyclical Fiscal Policy and the Multiyear Perspective on Budgeting,” 735.

<sup>130</sup> State Budget Stabilization Funds, Spring 2008, <http://www.ncsl.org/programs/fiscal/rdf2008.htm>, (accessed July 23, 2008).

<sup>131</sup> Ibid.

<sup>132</sup> Hou, 732.

Whenever Kansas has debated the issue of a multi-year budget, the same argument in opposition has been used; today's legislature cannot bind next future legislatures. While that argument is true, the benefit of passing a multi-year budget is the future legislature must act to rescind the prior legislative action. The rescission action can prove more difficult than simply not passing a particular portion of the current year's budget.

#### **4. Conclusion**

The foregoing are just three examples of proposals to generate monies for public safety. Other taxes, e.g., real property, income or excise, might be considered, but the proponent must understand the political consequences absent significant constituent support. In addition to a congestion fee, a legislature might consider a "surcharge" on agricultural inputs and products, or on utility bills. Given the current increases in energy costs, the political repercussions for such "surcharges" might not be favorable for politicians. User fees and surcharges may, however, be more politically acceptable than outright tax increases. According to Shannon, "the old three-legged stool has now become a four-legged table,"<sup>133</sup> with the fourth leg being fees. Although BSFs are prevalent, using one to replace federal homeland security funding may not be as acceptable to voters as NCSL states. A BSF is not truly a "source" of funding as it is comprised of monies received from other revenue streams and held in the BSF for the "rainy day."

As mentioned at the beginning of this chapter, state and local units of government habitually use the "structuralist" approach to budgeting. Infrequently do appropriators attempt to look outside the box for revenue enhancement. Typically, legislators look at revenue projections for the three, or four, legs and divide that revenue among existing programs they believe will procure for them the greatest re-election support. Such an approach, absent another significant event similar to 9/11, will not provide sustainability funding for homeland security initiatives.

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<sup>133</sup> Billy Hamilton, "A Lesson in Fiscal Federalism," National Conference of State Legislatures, Denver: CO, *State Legislatures*, July/August 2008, 50.

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## V. OUTSIDE THE BOX OPTIONS

Chapter IV discussed options that come from thinking “inside the box.” Value innovation, however, would occur from developing “outside the box” options, e.g., public-private partnerships and innovative investment strategies. Bryson’s *Strategic Planning* is based more upon a hierarchical, command and control philosophy. The *Starfish* philosophy, however, is more chaotic. The authors of *Starfish* compare what happens when a spider (hierarchical) organization is damaged to what happens when a starfish (decentralized) organization is damaged. If the damage is extensive enough, the spider dies. In any event, it is crippled. The starfish, however, not only can grow a new leg, the severed leg can grow a whole new starfish.

*Starfish* offers examples of decentralized groups that have flourished, e.g., the Apache nation; al Qaeda; and Alcoholics Anonymous. According to *Starfish*, the key reasons for such successes are, *inter alia*: bottom-up communication to which leaders pay heed; “appreciative inquiry” between leaders and their rank and file members; and leaders who develop characteristics of a catalyst for fostering an atmosphere where change and innovation can occur and who relinquish some degree of control in order to permit that change. *Starfish* recognizes not all situations are appropriate for total decentralization. The philosophy is to find the best combination of centralization and decentralization that suits the organization and fosters innovation. That is the task of homeland security professionals and legislators. The traditional structure of command and control is prevalent in both the homeland security and legislative arenas. Unfortunately, the more traditional an organization is, the less likely innovation will occur. Homeland security and the legislative process will never be completely decentralized, but the somewhat more chaotic *Starfish* approach may prove more useful than the more structured approach in *Strategic Planning* for developing innovative funding solutions.

Traditionally, state and local governments have believed, in terms of physical assets to respond to natural or manmade disasters, more is better. The *Starfish* approach, however, may prove beneficial to both government and taxpayers. The initial idea is a smaller, streamlined department could adapt more quickly to the occurrence while keeping taxpayer investment at a minimum; an aspect elected officials appreciate. How might that be possible? One of the premises of the *Starfish* network is that it costs nothing to add a “customer.” In this instance, the “customer” would actually be a person or company able to assist in prevention, preparedness, response or recovery efforts without requiring an up-front investment by the government. Every entity added to the homeland security network would add value without increasing the cost significantly, if it increased costs at all.

Initially, the starfish network might seem chaotic to the traditional governmental bureaucrat who might think, “They can’t possibly know what they are doing.” In reality, if the correct network is established, the members of the network may have a much better idea of the four pillars of homeland security, prevention, preparedness, response and recovery. Private businesses address such issues regularly. Private businesses must perform similar tasks, but with the additional caveat that those tasks not inhibit profit generation. Chaos may, in fact, create the innovative atmosphere needed to provide solutions to the lack of governmental resources for handling homeland security initiatives.

One of the key aspects of the *Starfish* approach is that knowledge is spread throughout the organization.<sup>134</sup> The second most important aspect is that management acts not as the answer machine, but as the catalyst for connecting people and reminding everyone of the ideology. Management in this situation is the policymakers and those charged with developing the strategy to implement the policy. Examples of these aspects of management are the legislature and the department of emergency management.

Ideally, the two processes could be married so the *Starfish* approach might find additional possibilities for funding initiatives while not increasing the tax burden on the

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<sup>134</sup> Brafman and Beckstrom, *The Starfish and the Spider*, 204.

general public. The *Strategic Planning* approach, however, still has merit. There is a need for state and local units of government to identify exactly the mandates from their constituents for protecting the general public. There also is a need to assess the internal and external environment to identify strengths, weaknesses, opportunities and threats before deciding upon an ultimate strategic plan. *Strategic Planning* advocates adopting a strategic plan and an effective implementation plan. Both are critical in the public setting. Finally, *Strategic Planning* recommends reassessing the plan and planning process. Continual review is essential so whatever plan is developed may be adapted to changes in the internal and external environments. Facilitating such a review is the responsibility of policymakers.

#### **A. PUBLIC/PRIVATE PARTNERSHIPS**

Homeland Security Presidential Directive 8 (HSPD-8), in pertinent part, states:

##### **Citizen Participation**

(22) The Secretary shall work with other appropriate Federal departments and agencies as well as State and local governments and the private sector to encourage active citizen participation and involvement in preparedness efforts. The Secretary shall periodically review and identify the best community practices for integrating private citizen capabilities into local preparedness efforts.<sup>135</sup>

While HSPD-8 refers specifically to “preparedness,” prevention is inextricably intertwined with preparedness. Attempting to put pressure on the Federal government, however, to follow its own directives will, in all probability, be fruitless. A recent survey by the National Governors Association Center for Best Practices found that state homeland security directors experienced “challenges” with the Federal government regarding funding and coordination with states prior to implementation of policies.<sup>136</sup> In addition, the survey found half of the directors believed the Department of Homeland

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<sup>135</sup> George W. Bush, *Homeland Security Presidential Directive/Hspd-8* (Washington, D.C., December 17, 2003).

<sup>136</sup> Jeff Mitchell, *2006 State Homeland Security Directors Survey* (National Governors Association Center for Best Practices, Washington, D.C., April 3, 2006), 4.

Security underemphasized prevention. In February 2006, the Federal government again stressed the importance of “citizen preparedness” as one of the most effective means of preventing terrorist attacks and protecting against all hazards.<sup>137</sup> The *Federal Response to Hurricane Katrina: Lessons Learned* (Report) went on to discuss the need to “partner” with the private sector because it owns 85 percent of the nation’s critical infrastructure. The nation relies upon that infrastructure for defense, as well as for continuity of government.<sup>138</sup> Protection of the critical infrastructure falls upon the private sector, but it cannot be accomplished effectively unless the private sector understands the government’s plans, and vice versa. The Report calls upon the Federal, state and local governments to work collaboratively with the private sector to develop plans, especially for response. It encourages the development of initiatives such as those of Business Executives for Homeland Security (BENS).<sup>139</sup>

Recommendation 101 of the Report emphasizes the BENS Business Force project. It commends the project for developing partnerships among regional, state and local officials and businesses. Those partnerships, according to the Report, have been successful in filling gaps in preparedness capabilities. Finally, the survey found 80 percent of the states were coordinating homeland security plans with the private sector.<sup>140</sup> The recommendation goes on to state:

The Federal government should recognize that the private/non-government sectors often perform certain functions **more efficiently and effectively than government** because of their expertise and experience in applying successful business models.<sup>141</sup> (Emphasis added)

In its 2006 white paper *Regional Public-Private Partnerships: The Next Wave in Homeland Security*, BENS acknowledged public/private partnerships are difficult

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<sup>137</sup> Frances Fargos Townsend, *The Federal Response to Hurricane Katrina: Lessons Learned* (Washington, D.C., February 2006), 80.

<sup>138</sup> *Ibid.*, 81.

<sup>139</sup> *Ibid.*

<sup>140</sup> *Ibid.*, 5.

<sup>141</sup> *Ibid.*, 116.

because there is a lack of mutual trust,<sup>142</sup> but cites seven partnerships in different areas of the United States that have been developed. One is a New Jersey program that incorporates a web-based registry of business resources at the state and local level that might be used in a response. According to BENS, however, that program is not truly a state-wide resource, but a regional resource. It also provides a targeted alert system for potential threats and a satellite datacasting system for alternate communications. Both are elements of preparation and potential prevention.<sup>143</sup>

Another example cited from BENS is the MidAmerican Business Force in the Kansas City metropolitan area, including Missouri and Kansas. BENS is assisting with the development of an information fusion center called “Terrorist Early Warning Information Analysis Center,” as well as “Operation Resilient Guard.”<sup>144</sup> The intent of the programs is to prevent possible disasters and to prepare in the event one does occur. That preparation includes communication with and education of the private business community regarding potential threats. In addition, BENS is working with the National Emergency Management Association to explore the possibility of a business version of EMAC to manage business donations and goods and services purchased by government first responders.<sup>145</sup> Such an asset would not be a source of funding, but more effective management of goods and services could translate into monies not having to be expended wastefully and, therefore, the savings would be able to be allocated elsewhere.

The obvious strategy outlined above is one of cooperation and collaboration among governments and private businesses. Developing partnerships would occur because businesses and government realize it is the best way to prepare in the event of a disaster. It also has great potential for prevention because communication is established and, as a result, trust is already created. The communication to and through entities such as Terrorist Early Warning can only enhance prevention efforts. According to BENS,

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<sup>142</sup> “Regional Public-Private Partnerships: The Next Wave in Homeland Security,” *Business Executives for National Security*, November 2006, 1.

<sup>143</sup> *Ibid.*, 2.

<sup>144</sup> *Ibid.*, 3.

<sup>145</sup> *Ibid.*, 5.



many of the components of the partnerships are provided *pro bono* by private businesses. While not technically a funding source, *pro bono* contributions are definitely a funding mechanism that provides valuable resources to state and local governments without the need to actually expend any public funds.

Two other examples of public/private partnerships used to entice private business into partnerships are InfraGard and the Mid-America Regional Council (MARC). MARC is a regional organization in the Kansas City metropolitan area that includes both Missouri and Kansas. It represents nine counties and 120 cities in the region. One of its stated purposes is to enhance the effectiveness of local government. MARC's Regional Homeland Security Coordinating Committee (RHSCC) oversees the regions efforts to enhance and respond to terrorism. RHSCC attempts to maximize public and private resources in the metropolitan area.<sup>146</sup> MARC is not an actual funding source, but the maximization of private resources for public safety issues allows scarce state and local government financial resources to be allocated to other priorities.

InfraGard is a program of the Federal Bureau of Investigation that partners with private business, state and local law enforcement, and academia so there can be a timely exchange of information. That exchange enables private business and academia to protect assets while enabling the Federal government to prevent terrorism and other crimes. Most importantly, trust has been developed between the participants that facilitates the exchange of information regarding terrorism, intelligence, criminal and security matters.<sup>147</sup>

The article "Retail Responders" is an excellent discussion of what some private businesses are doing in the areas of preparedness and response, essentially without government incentives.<sup>148</sup> Wal-Mart has a 4,000 square foot state-of-the-art response center.<sup>149</sup> Its purpose is to track any sort of activity, natural or man-made, that may

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<sup>146</sup> MARC, Mid-America Regional Council, Emergency Services, Home Page, "Regional Homeland Security Coordinating Committee," [www.marc.org/emergency/rhsc.htm](http://www.marc.org/emergency/rhsc.htm) (accessed July 23, 2008).

<sup>147</sup> InfraGard, Public-Private Partnership, [www.infragard.net](http://www.infragard.net) (accessed July 23, 2008).

<sup>148</sup> Michael Peltier, "Retail Responders," *HSToday*, 4, no. 6 (June 2007).

<sup>149</sup> *Ibid.*, 28.

require an emergency response. If a threat is noted, Wal-Mart begins to move inventory into staging areas. Such actions are designed to protect their employees, customers and the communities it serves.<sup>150</sup> The Home Depot has employees who monitor weather patterns and meet monthly with state government officials for emergency planning. AT&T trains to restore communications with 72 hours and is prepared to ship trucks, communications equipment and personnel to assist local governments.<sup>151</sup>

The Business Roundtable was formed in 2006 by some of the largest companies in the country to perform a “simple role:”

Identify needs, increase private sector contact with state emergency managers and collaborate with government responders and other private companies for improved communication, technology and supply chain logistics.<sup>152</sup>

These public/private partnerships provide invaluable assets state and local units of government could never afford to stockpile. Private companies may have a primarily selfish reason for their preparedness and response programs, i.e., taking care of employees and customers, but the assets they furnish diminish the need for state and local funding for the identical purposes. The more that is provided by private companies, the less that is needed from government tax coffers. The synergies of private companies working with state and local units of government provide a mechanism for businesses reopening more quickly while the strain on government services, and therefore funding, is lessened.

BENS has been instrumental in beginning another program that, if proven viable, will assist all states not only with prevention, preparation, response and recovery, but with funding. Working with BENS, Missouri is developing a State Emergency Resource Registry (SERR). SERR is modeled upon the network developed and deployed by The

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<sup>150</sup> Peltier, “Retail Responders.”

<sup>151</sup> Ibid., 31.

<sup>152</sup> Ibid., 30.

Aidmatrix Foundation; The Aidmatrix Network (Network).<sup>153</sup> The Network currently provides a portal for companies or individuals to donate or lend resources to non-profit organizations.<sup>154</sup> It is funded by a partnership between the Federal Emergency Management Association, the Department of Homeland Security and private sector sponsors.<sup>155</sup>

A SERR would have a public link and a secure link. The public link would provide information on the program and allow access to a secure database for a company to register its resources. Homeland security or emergency management personnel would have access to the secure database of available resources through a secure portal on the Network.<sup>156</sup>

To a homeland security professional, the benefit of SERR is obvious. Knowing the availability of assets and services prior to the surge demand created by a catastrophic event will create a level of preparedness not otherwise attainable with government resources. Policymakers responsible for state budgets should, likewise, benefit from SERR. A properly constituted network will provide emergency response capacity not otherwise attainable, especially given the decline in federal grant funding. Additionally, since the existing Aidmatrix network would be adapted, states should have minimal development costs.

A potential delay to implementation of a SERR might be state statutes. To protect volunteer workers and companies that donate goods or services from liability, statutes should be reviewed and amended to limit donors' exposure.

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<sup>153</sup> William F. Lawson, III, *State of Missouri Emergency Resource Registry (MERR) – powered by Aidmatrix: A Public – Private Partnership Asset Management System* (Kansas City, MO, August 14, 2008), 1.

<sup>154</sup> Lawson, III, *State of Missouri Emergency Resource Registry (MERR) – powered by Aidmatrix: A Public – Private Partnership Asset Management System*, 2.

<sup>155</sup> Ibid.

<sup>156</sup> Ibid., 3.

## B. INNOVATIVE INVESTMENT STRATEGY

In 2004, the Kansas legislature passed the Kansas Economic Growth Act (KEG Act). Since portions of the KEG Act appear in various sections of Kansas Statutes Annotated, but appear as one document in the original House Bill, all references will be to 2004 House Bill (HB) 2647.

The KEG Act establishes the Kansas Bioscience Authority (Authority) with the following mission:

[T]he mission of the Kansas bioscience authority is to make Kansas the most desirable state in which to conduct, facilitate, support, fund and perform bioscience research, development and commercialization, to make Kansas a national leader in bioscience, to create new jobs, foster economic growth, advance scientific knowledge and improve the quality of life for the citizens of the state of Kansas;<sup>157</sup>

In addition to the foregoing mission, the Authority has the power to: oversee the commercialization of intellectual property created by the “rising star scholars;” own and possess patents and proprietary technology, and enter into contracts for commercialization of the research; and incur indebtedness to construct state-of-the-art facilities.<sup>158</sup>

The funding of the Authority and the statutory protections for that funding are critical to its success. Absent specific statutory provisions to the contrary, any fund within the state treasury is subject to the whims of the politicians. The KEG Act provides:

(a) The bioscience development and investment fund is hereby created. The bioscience development and investment **fund shall not be a part of the state treasury** and the funds in the bioscience development and investment fund shall belong exclusively to the authority.<sup>159</sup> (Emphasis added)

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<sup>157</sup> 2004 House Bill 2647 § 2(a)(5).

<sup>158</sup> Ibid., §9.

<sup>159</sup> Ibid., §21.

The emphasized language is critical to the protection of the fund. It resides outside the state treasury and is not, therefore, subject to being “swept” (taken away) by the politicians in the event of budget shortfalls.

The funding for the Authority is also set forth in Section 21. It is a combination of all employment and property taxes paid by universities and bioscience companies in excess of those paid during a base year determined by the secretary of revenue. In addition, interest earned on the fund is paid to the fund on a monthly basis. Lest the reader think the size of the fund might be negligible, the law was amended in 2005 to place a cap on the fund of \$581.8 million.<sup>160</sup>

What does the Kansas Bioscience Authority have to do with funding homeland security initiatives? Nothing. The KEG Act, on the other hand, has everything to do with funding homeland security initiatives. If it can be done for bioscience, it can be done for homeland security.

In order for the bioscience initiative to function properly, the KEG Act included the Emerging Industry Investment Act (EII),<sup>161</sup> the Bioscience Development Financing Act (BDF),<sup>162</sup> the Bioscience Tax Investment Incentive Act (BTII),<sup>163</sup> the Bioscience Research and Development Voucher Program Act (BR & D)<sup>164</sup> and the Bioscience Research Matching Funds Act (BRM).<sup>165</sup> Each of these acts has a specific function in relation to stimulating the bioscience industry. The EII protects the funds that are to be used for investing in various programs and for bond repayment. The BDF provides the investment incentive of tax increment financing districts for bioscience development. The BTII makes additional cash resources available to start-up companies by authorizing the Authority to pay up to 50 percent of a start-up company’s net operating loss. The BR & D provides up to 50 percent of the cost of a research project. Finally, the BRM provides

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<sup>160</sup> Kansas Statutes Annotated 74-99b34.

<sup>161</sup> 2004 House Bill 2647 § 18.

<sup>162</sup> *Ibid.*, § 23.

<sup>163</sup> *Ibid.*, § 31.

<sup>164</sup> *Ibid.*, § 34.

<sup>165</sup> *Ibid.*, § 41.

matching funds to research institutions to do bioscience research and to attract federal and private sources of funding into Kansas.<sup>166</sup> Each of the foregoing acts provides a different incentive for investment in the bioscience industry. Kansas invests some of its public funds in the industry, but, more importantly, federal and private funds are invested in the industry, thereby creating not only a possible revenue stream from the actual investment, but also a broader tax base for each “leg of the stool.”

A venture capital company in Washington, D.C., was recently reported to be creating a fund for homeland security technologies.<sup>167</sup> Using the KEG Act as a template, states can provide the same investment opportunity. The opportunity, however, would not be just for the venture capital company, but also for the state. Each aspect of the KEG Act would have to be tailored to investment in homeland security industries. Possibilities are only limited by the ingenuity of entrepreneurs. One possibility would be developing nano-technology for use with cameras aboard unmanned aerial vehicles. Another possibility would be developing “farmaceuticals” that could be used to prevent or respond to a biological agent introduced by a terrorist. Farmaceuticals are agricultural products raised on farms, as opposed to manufactured in pharmaceutical plants. Once the venture becomes self-sustaining, the governmental investment could be sold, either partially or entirely, and the proceeds used to fund homeland security initiatives. If the investment is retained, in whole or in part, the return on investment, whether in the form of dividends or interest, could be used to fund homeland security initiatives. The profit realized by the investments could then be used to replace vanishing federal funds.

Not every jurisdiction would be willing to foster such a program. Some jurisdictions may have a more conservative investment philosophy; some may not permit public funds to be used for private purposes. Having 50 authorities invest in homeland security ventures in 50 jurisdictions might prove financial folly for all. However, 50 authorities investing on a regional basis may prove financially attainable. One caveat of which each jurisdiction should be aware is the potential for the venture to fail. During the

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<sup>166</sup> 2004 House Bill 2647 § 42.

<sup>167</sup> National Homeland Security Database, Venture Capital Investing and Funding in Homeland Security & Defense Technologies, <http://www.twotigersonline.com/research/venture.html> (accessed July 16, 2008).

past eight years, the author has served on the Senate Commerce Committee (Committee). Almost every year, the Committee has received reports and testimony regarding the rate of failure for new ventures; four out of every five. The positive aspect of the testimony has always been the one venture that succeeds more than makes up for the losses incurred by investing in the other four.

As with any investment strategy, there is a risk of loss. Without a replacement strategy for federal funding, the risk of loss to the politicians' constituents, however, is even greater. Therein lies the nightmare for the politician. "Do I not provide homeland security for my constituents or do I support a bold and innovative strategy that may lose taxpayer funds?"

## **VI. CONCLUSION**

### **A. REVIEW**

This thesis has reviewed the question, “What alternatives are available to states and local units of government to provide for homeland security initiatives in light of reductions in federal funding?” The results of the literature review and the survey of homeland security and emergency preparedness directors are, unfortunately, inconclusive. The research has found no policy solution in any jurisdiction that is a possible solution for every jurisdiction. The possible solutions suggested herein are only meant to be suggestive only and are not meant to be all inclusive.

The need to provide funding for homeland security initiatives exists for two basic reasons. The first is homeland security, in the view of several states, is an all hazards issue. We cannot be concerned simply with terrorism, but as Kansas experienced over the past few years, devastating ice storms, floods and tornados wreaked havoc on individuals, the economy and the state. Secondly, the Constitutional liberties and protections guaranteed to everyone who lives in the United States creates a societal situation where potential terrorists can live without fear as long as they are only practicing freedom of speech and/or religion. We must be prepared, however, to deal with both the natural disasters and the disasters created when a terrorist steps beyond those guaranteed freedoms.

As shown earlier in this thesis, states cannot depend upon the federal government to honor its commitments to fund homeland security initiatives at the state and local level. Total reductions for the SHSGP between 2003 and 2006 were 74.4 percent. Reductions for LETPP for the same period were 23.2 percent; UASI increased overall 19 percent, but some metropolitan areas actually experienced a per capita decline; EMPG increased 8.7 percent; MMRS decreased 31.9 percent; and CCP increased 2.2 percent. CIP was funded only in 2003. While UASI increased in 2008, the 2009 budget request is an extreme cut from prior years.



In order to be proactive and provide sustainability funding, states must prioritize the programs available to them. Initially, prioritization must be done by the homeland security and emergency management professionals. The next step is to convince politicians the prioritization is correct and the programs desire funding. Any potential solution is significantly influenced by the mindset of politicians. The mindset of politicians is significantly influenced by the budgeting process, not to mention being heavily influenced by the desire to please constituents and not raise taxes.

Absent a change in law and policy at the national level, state and local politicians will be faced in the not too distant future with the daunting task of providing funding for mandatory social program such as Medicare and Medicaid. The exponential growth in health care cost projected over the next several years may leave politicians with no funds available for discretionary spending, which includes homeland security.

States have enacted various programs and legislative solutions: some innovative and some more traditional. Several states have provided special disaster funds to be used in the event of an emergency. Many have turned to public-private partnerships that provide a one-time source of funding. All states have joined EMAC and many have entered into additional agreements with neighboring states for emergencies not covered by EMAC.

Conventional, or “in the box,” solutions rely on the legs of the “three-legged stool” and, perhaps, on a fourth leg, fees. Each of the legs represents a form of tax that is progressive, proportional or regressive. Unfortunately, no matter what the tax is called, it is still a tax. Most politicians are reluctant to pass tax increases, regardless of type. Such solutions, however, are limited only by the imaginations of the politicians who enact them.

The examples reviewed were, asset forfeiture, with the commensurate review of criminal statutes; sales tax; a congestion fee; and budgetary changes. The budgetary changes could be enacting a multi-year budget and/or providing for a budget stabilization fund. Each of these examples has drawbacks. Asset forfeiture requires statutory changes that may not be easily passed, not to mention the cumbersome procedure for statutory

review to make certain asset forfeiture can be utilized for both criminal and civil litigation. Whether trying to enact a sales tax or a congestion fee, a significant number of voters will be enraged about paying higher taxes, regardless of how important the cause, i.e., homeland security. Persuading politicians to move from an annual budget to a multi-year budget may be like attempting to raise the Titanic. Many politicians believe such a change would cause them to lose control over the budgeting process. Similarly, persuading politicians to establish a budget stabilization fund and remit excess revenue to the fund could prove very difficult. Politicians typically prefer to either lower taxes or return the excess revenue to the voters. During the next election, politicians remind their constituents how attentive they have been to constituent demands for lower taxes and refunds.

This thesis only proffered three possible, less conventional, or “outside the box,” solutions. Such solutions, however, are also only limited by imagination. Public/private partnerships can offer more than just money. State and local units of government can partner with companies that can provide, from their own inventory, assets government needs to respond to and recover from a disaster. In addition, private companies may have stockpiles of materiel available for company purposes, e.g., taking care of their employees and customers that may serve a dual purpose. The second purpose would be to assist units of government in preparing for disasters.

The other public/private partnership discussed was a state emergency resource registry. To date, there is no state that has a registry, but a prototype may be available in the near future. With such a registry, the assets of private industry are listed and categorized to be used as a potential resource in the event of a disaster. The assets exist in the normal course of doing business for the private companies, but their existence becomes an asset for the state or local unit of government in the event of a disaster. The benefit of such a registry would be knowledge of the amount and type of assets and number of volunteers available during an emergency. Such knowledge could lead to a much lower need for funding to provide stockpiles of assets or employees.

Another proffered suggestion is an investment philosophy that could be made available on a state or regional basis. Homeland security legislation could be modeled

after the Kansas Economic Growth Act. The act deals with economic development, but the legislation could be adapted for use with homeland security investment initiatives. Not every state could financially afford to provide such incentives nor would the industry be large enough to locate in every state. For the states where the investment was feasible and the industry viable, however, and if Kansas' bioscience experience could be duplicated, a significant revenue stream could be generated to provide some degree of sustainability funding for homeland security. The investment would be in the homeland security business. The proceeds from the investment would be used to lower or sustain the costs of homeland security initiatives. The philosophy may be considered speculative and not commensurate with the investment goals set by state statute or directive. Legislation may be required to permit such investments and to provide for how funds could be spent.

## **B. WHERE TO FROM HERE?**

Absent a marked change in the federal budget trends, health funding will continue to escalate at a rapid rate. Discretionary funding in the federal budget will become more and more limited. That translates into fewer and fewer dollars trickling down to state and local units of government for homeland security initiatives.

It is incumbent upon homeland security professionals and emergency management directors to take the initiative and determine in their individual jurisdiction which disaster programs are the most critically necessary. It is then incumbent upon those same individuals to work with their counterparts within their individual states and prioritize, on a state-wide basis, those critically necessary programs. Once that has been accomplished, representatives of that group should approach the executive budget office for their state and request budget consideration for the list of priorities.

If the executive budget office is amenable and includes the request in the budget, the same group should testify in support of the executive budget provisions dealing with homeland security and emergency management. They should be accompanied by their counterparts from each district represented on each of the legislative committees that deal with the budget. If the budget is passed by the committees, every legislator should be

contacted by homeland security professionals and emergency managers from the legislator's home district. As politicians, the legislators will understand the issue is important to a voter.

If the executive budget office is not willing to include the request in the budget it presents to the legislators, the group should make the request of the individual budget committees. The request is best presented by constituents of the legislators serving on the legislative budget committees. If those committees include the request in the proposed legislation, every legislator should be contacted by constituents regarding how important funding the prioritized initiatives is to the state.

Any legislator on a budget committee should ask one question, "How do you propose the state fund these programs?" The homeland security and emergency management professionals need to be ready to answer that question. The easy answer is "inside the box." The more difficult answer is "outside the box." In the author's experience, the difficult answer will get more consideration than the easy answer. Inside the box solutions typically mean increasing a tax or redistributing the proceeds from a tax. Both are difficult to achieve. Innovative suggestions, however, will get more attention simply because they are not taking away from some constituent's, and therefore legislator's, pet program.

The homeland security and emergency management professional who decide to tackle the funding problem should be as inclusive as possible. While some degree of hierarchy is necessary, the broader and flatter the organization, the more likely innovation will occur.

The final sentence in *Starfish* is one of the most important a homeland security professional and a politician can remember. Good planning may come from the top down. Great planning comes from all around. "But when we begin to appreciate their full potential, what initially looked like entropy turns out to be one of the most powerful

forces the world has seen.”<sup>168</sup> That force is what homeland security professional must capitalize upon to help politicians find adequate resources for funding homeland security initiatives.

The possibilities for funding homeland security initiatives are limited only by the imagination of the homeland security professionals and the politicians. The best possible solutions will come from state and local homeland security professionals using a *Starfish* approach to developing ideas; some may be old; some may be new; some may be oppressive; but the ability of the rank and file homeland security professionals to dream must be fostered. That chaotic dreaming will lead to funding solutions politicians would have imagined only had they been statesmen.

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<sup>168</sup> Brafman and Beckstrom, *The Starfish and the Spider*, 208.

## APPENDIX

The Council of State Governments (CSG)  
CSG's Southern Office, the Southern Legislative Conference (SLC)  
Report on Innovative State Programs in Funding Homeland Security Needs

State revenue inflows have improved significantly in the last three fiscal years compared to the depths to which they plunged in the early years of this decade. Notwithstanding these increased revenues, states currently face, and will continue to face, a series of major expenditure categories in the coming years (healthcare, education, pensions, transportation and infrastructure) along with sizable expenses related to emergency preparedness, emergency management and homeland security in dealing with both natural and human-related disasters.

State policymakers, with governors at the helm, play a crucial role in preparing for and in responding to natural disasters (Hurricane Katrina), accidents (Minnesota Bridge Collapse) and other types of major emergencies (pandemic flu preparedness) and terrorist incidents (9/11 attacks). Specifically, governors and their staff are responsible for liaising with state and local government personnel in enacting a range of preventive measures and then coordinating the state's response to these emergencies and disasters. Not only are state and local personnel the first line of defense in preparing for and responding to these emergencies, they are also likely to be the officials spending the most amount of time at the scene of the emergency.

Since the September 11, 2001, attacks, the federal government has played a more active role in helping states and local governments prepare and respond to the myriad emergencies, mainly through the Homeland Security Grant Program (HSGP) operated by the federal Department of Homeland Security. According to federal data, total HSGP funding to the states between fiscal years 2002 and 2007 totaled \$11.6 billion with the annual breakdowns amounting to \$315.7 million in fiscal year 2002, \$2.7 billion in fiscal year 2003, \$2.9 billion in fiscal year 2004, \$2.3 billion in fiscal year 2005, \$1.7 billion in fiscal year 2006 and \$1.7 billion in fiscal year 2007. As evident from this information, federal funds to the states under the HSGP have decreased in the last few years despite the heightened threats and constantly increasing federal homeland security requirements on state and local governments.

In response to the dwindling federal homeland security funds, states have been forced to devise and implement a range of innovative programs to enhance their security and response capabilities. However, except for some anecdotal information, there is very little comprehensive information on these programs. More information on these innovative programs from certain states will be instructive to other states as they seek to maximize use from the federal homeland security grants awarded to them.

In order to gather the latest and most accurate information, The Council of State Governments' (CSG) Southern Office, the Southern Legislative Conference (SLC), intends to prepare a report with information obtained from states and by carrying out additional research. The state emergency management agencies will be a primary source of information for this report and once it is published, it will be made available to a range of public and private sector officials.

The lead researchers working on this project will be the following CSG staffers:

Mr. Sujit CanagaRetna and Mr. Jeremy Williams, both in CSG's Southern Office at 404/633-1866 (phone); 404-633-4896 (fax) and scanagaretna@csg.org and jlwilliams@csg.org.

A response by October 12, 2007, will be greatly appreciated. If you have any questions, please feel free to contact any one of the lead researchers for additional information.

Thank you for your assistance in this valuable research project.

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The Council of State Governments (CSG)  
CSG's Southern Office, the Southern Legislative Conference (SLC)  
Report on Innovative State Programs in Funding Homeland Security Needs  
Survey Questionnaire

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
State: \_\_\_\_\_  
Contact Information: \_\_\_\_\_  
- Address \_\_\_\_\_  
\_\_\_\_\_   
- Phone \_\_\_\_\_  
- Email \_\_\_\_\_

- I. Are there innovative programs initiated by your state between fiscal years 2002 and 2007 that you would like to identify as noteworthy strategies in dealing with the dwindling federal fund situation? Please provide as much detail as possible.
- II. Has your state made specific efforts to leverage additional federal funds with the homeland security matching grants program? If so, please provide details along with the relevant fiscal years involved.
- III. Has your state placed a great deal of emphasis on performance measures related to federal homeland security grant funds? If so, please provide additional information along with the fiscal years involved.
- IV. In what ways do you feel that these federal dollars are being spent efficiently and effectively? If so, please provide additional information along with the fiscal years involved.
- V. Has your state made an effort to integrate preparing for public health emergencies into the homeland security picture? If so, please provide details. Have efforts in this connection resulted in an increase in federal funds?
- VI. Has your state combined efforts with another state (or states) in dealing with mutual homeland security concerns on a regional basis? If so, please provide details. Have the regional alliances resulted in federal homeland security funds?
- VII. Are there any programs in your state that establish public-private partnerships to address homeland security issues? If so, please briefly describe the nature of the partnership, including any details of the obligations (financial and otherwise) that exist for each associate.
- VIII. Did your state spend all the federal homeland security funds in each of the last five fiscal years (fiscal years 2003 through 2007)? If not, can you please provide some details as to why these funds were not fully spent, such as the length of time taken to award homeland security contracts, the length of time taken to complete homeland security projects or any other reasons?
- IX. Please list your state's homeland security/emergency management budgets for each of the fiscal years 2002 through 2008? How much interaction is there between state budget office and your state's homeland security/emergency management offices in formulating annual budgets? For instance, is your state budget office informed about any innovative programs that might have been introduced by the homeland security/emergency management office?
- X.
  - (a) In an environment of dwindling federal homeland security funds, what would you list as your three most important concerns in preparing for natural emergencies?
  - (b) What would you list as your three most important concerns in preparing for human-related emergencies?
- XI. Relative to other states in your region, what would you say are your state's greatest capabilities in regards to homeland security?
  - (a) In what areas would your state most benefit from additional funding in regards to public safety and homeland security?
  - (b) Particularly, are there areas, including but not limited to urban security; homeland security strategies and equipment; terrorist prevention resources for law enforcement; local capabilities for medical response to disasters; and citizen and community involvement in disaster preparedness and response that would take precedence over others in regards to financial need in your state?
- XII. If you have any additional information related to innovative programs enacted by your state to deal with dwindling federal homeland security funds, please provide us details of these programs.



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